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

+ CRL.M.C. 2697/2021, CRL.M.A. 17267/2021 & CRL.M.A.
27336/2022

MOHD. NAZIM

..... Petitioner

Through: Mr. Aman Nandrajog, Mr. Amitabh
Sinha and Mr. Anupam Pandey,
Advocates

versus

STATE

..... Respondent

Through: Mr. Ajay Vikram Singh, APP for the
State with SI Sunita, PS. IGI Airport

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

17.08.2023

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1. The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the FIR NO. 70/2016 dated 19.02.2016 at PS. IGI Airport under Sections 25/54/59 of the Arms Act, 1959 and all proceedings emanating therefrom.
2. As per the FIR, on 19.02.2016, while the petitioner was travelling from Delhi to Riyadh on Air India Flight bearing no. AI-925, he was found in possession of 01 live cartridge (.32) in his check-in baggage and upon questioning, could not give any valid reasons and justification for the same. Thereafter on the complaint of the Senior Security Superintendent, Air India, the FIR in the present case was registered.
3. Learned counsel for the petitioner submits that the petitioner is a

businessman, resident of Moradabad, Uttar Pradesh. It is submitted that only a few days prior to the date of the incident, he had travelled to Bijnaur to attend a wedding where he had stayed at the house of one Mohammad Nazim, who is known to his family for over 40 years and who has a duly verified license to bear arms being License no. 39550 issued by the State of Uttar Pradesh. It is submitted that Mohammad Nazim had shown him guns and bullets to the petitioner and it was during such time that inadvertently, one of the cartridges fell into the bag of the petitioner, which was detected at the Airport. Learned counsel for the petitioner submits that the petitioner had no knowledge of the cartridge in his bag. He further submits that it was due to panic and fear that the petitioner could not divulge this information during investigation.

4. Relying upon the judgements of the Coordinate Benches of this Court in *Namanpreet S. Dhillon vs. State* 2022 SCC OnLine Del 2255, *Koteshwari Organti vs. State of NCT of Delhi* and *Rahul Mamgain vs. State of NCT of Delhi* 2022 SCC OnLine Del 4917 , learned counsel for the petitioner submits that the petitioner was not in conscious possession of the cartridge and had no intention to carry the same and that only a solitary cartridge was found in his possession without any firearm which does not prove that the petitioner had animus possidendi. Learned counsel for the petitioner thus prays that the present FIR be quashed.

5. The Status Report has been filed stating therein that the Arms License of Mohhamad Nazim was verified and it was found that the weapon type is Revolver, .32 Bore, Weapon number FG-39550, issued in Uttar Pradesh and valid until 19.05.2026.

6. I have heard the learned counsel for the petitioner and the learned

APP for the State and have perused the relevant documents on record.

7. It has been held in a plethora of judgments including in *Gunwant Lal vs. The State of Madhya Pradesh* (1972) 2 SCC 194 and *Sanjay Dutt vs. State through CBI Bombay (II) Crimes* 1994 (3) 344 (SC), that “conscious possession” is the most significant ingredient for prosecution under the Arms Act, 1959. The possession herein is not mere custody of the arms but such possession supported by mens rea or intention.

8. Further, a Co-ordinate Bench of this Court in *Chan Hong Saik Thr. Spa: Arvinder Singh vs. State* 2012 SCC OnLine Del 3320 has held that when only a single cartridge or bullet is found in the possession of the offender, without any other suspicious circumstances, such possession shall not be enough to prosecute the offender, as a solitary cartridge is a minor ammunition, which is protected under clause (d) of Section 45 of the Arms Act, 1959.

9. In the present matter, only a single live cartridge was recovered from the petitioner, and the record reveals that the petitioner was not conscious of such possession and it was inadvertently that the cartridge remained in hid bag while travelling. In view of the factual matrix involved, this court is of the view that it is fit case to quash the FIR as the petitioner had no intention of carrying the said ammunition.

10. Accordingly, the petition is allowed and FIR NO. 70/2016 dated 19.02.2016 registered at PS. IGI Airport under Sections 25/54/59 of the Arms Act, 1959 and all proceedings emanating therefrom are quashed.

11. Accordingly, the petition alongwith the pending applications stand disposed of.

12. However, since the FIR has been pending for the last 7 years and the

police machinery was put in motion, and involved for a considerable period of time, this Court finds it appropriate that the petitioner contributes towards the betterment of the society by doing some social good. Accordingly, the petitioner is directed to deposit costs of Rs. 50,000/- with the Regimental Fund Account, 3 Assam [Account No-10794938617, IFSC Code-SBIN0010460] within a period of one week from today.

13. Renotify on 23.08.2023 for compliance thereof.

SAURABH BANERJEE, J

AUGUST 17, 2023/akr