

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Reserved on: 29th May, 2019*
Decided on: 1st July, 2019

+ **BAIL APPLN.3003/2018**

MAYANK SINGHVI

..... Petitioner

Represented by: Mr.Abhiehsk Manu Singhvi,
Sr. Adv. with Mr.Sidharth
Aggarwal, Ms.Supriya Juneja,
Ms.Cheshta Jetly, Mr.Abhinav
Sekhri, Advs.

versus

STATE

..... Respondent

Represented by: Mr.Rahul Mehra, Standing
Counsel with Ms.Meenakshi
Chauhan, APP for the State
with Inspector Ranjay Atrishya
& Inspector Jogender Singh
Mr.Vishal Gosain, Adv. for the
complainant

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

Crl.M.A. 656/2019 in BAIL APPLN.3003/2018

1. In this Bail Application the petitioner has preferred the present application under Section 482 Cr.P.C. for placing on record additional documents some of which do not form part of charge-sheet but were provided to the petitioner on his application filed under Section 91 Cr.P.C. before the learned Trial Court. The documents primarily sought to be placed and relied upon vide this application which are not part of the chargesheet

are the messages generated from the clone of the mobile phones deposited with the FSL, clone copy of which the petitioner has received pursuant to the order of the learned Trial Court on an application filed under Section 91 Cr.P.C. It is the case of the petitioner that the deceased was under depression due to her hectic work life style which fact was acknowledged by her mother and was undergoing treatment from a Doctor in Chandigarh. Further the allegations of cruelty are baseless. There was no demand of dowry ever and quarrels between the spouses were also due to provocation. The petitioner seeks to place on record some of the copies of the whatsapp transcriptions between R.S. Batra and the petitioner, Nillum Batra and the petitioner and Karan Batra and the petitioner and relevant extracts of conversation between the deceased and the petitioner retrieved from his mobile phone. Besides these documents which were not part of charge-sheet, petitioner has also sought to place reliance on documents which form part of charge-sheet like copy of the post-mortem report, copies of the statements and supplementary statements of R.S. Batra and copy of the whatsapp exchanged between Seema Malik and the deceased as relied by the prosecution in the charge-sheet.

2. When this application came up on 14th January, 2019 this Court issued notice to the learned Standing Counsel, time to file reply within one week was granted and the bail application was listed on 1st February, 2019.

3. On 1st February learned Standing Counsel objected that the petitioner has not placed on record the complete material received by him as the clone copy pursuant to the orders dated 15th September, 2018 and 3rd November, 2018 passed by the learned Metropolitan Magistrate. Learned counsel for the petitioner thus sought leave to place on record the entire transcript.

4. The second objection of the Standing Counsel was that he was not certain whether transcripts so placed on record were true and correct copies from the clone copies received from the FSL and that this fact could not be ascertained on the basis of affidavit of the petitioner or his parokar. Learned Standing counsel also stated that he would require to file before this Court transcripts of the clone not only which have been given to the petitioner but also of the other mobile phones, I-Pad and laptop recovered and seized. Therefore to allay any apprehension of the learned Standing Counsel for the State as to whether the material placed on record was the transcript of the clone copies received from FSL, Director FSL was directed to provide the clone copies of hard-disk of all the phones, I-Pad, laptops recovered and seized and deposited with the FSL to the investigating officer within two weeks whereafter the investigating officer was to find out whether the transcript filed by the petitioner before this Court was the same or not and in case the same is not correct, the corrected copy of the same was directed to be filed along with the transcript of further additional materials so received from the clone copies received from the FSL.

5. On 28th February, 2019 learned Standing Counsel stated that Para 4 and 5 of the earlier order could not be complied with because the FSL could not retrieve the material from the I-Pad and the I-Phone of the deceased for want of password. He further stated that he needed two months time to retrieve the password and open I-Pad and I-Phone of the deceased whereafter only analysis can be done by the FSL and necessary documents placed on record.

6. In response learned counsel for the petitioner submitted that all records of the deceased and accused were in possession of the investigating

agency since 16th July, 2018. Only after the petitioner sought preservation of records that the investigating officer sent the I-Phones, I-Pads and laptops to the FSL and the main charge-sheet and supplementary charge-sheet was filed without the clone copies. Further, when the petitioner sought the clone copy of his phone to show what his case was, the investigating officer on 4th December, 2018 made a statement before the learned Trial Court that the clone copy of the mobile phone was not required for investigation. Learned counsel for the petitioner thus submitted that investigating agency having already exercised its option stating that the material sent to the FSL was irrelevant to the investigation, they cannot now seek to rely on the same.

7. After hearing learned counsels for the parties the Court granted further four weeks time to State to file whatever material it so wishes to place on record whereafter the Bail Application was to be heard on merits.

8. Objections of learned counsel for the State and the complainant to the documents filed along with this application are that the documents being beyond the charge-sheet the same cannot be looked into in view of the decision of the Supreme Court reported as (2005) 1 SCC 568 Debendra Nath Padhi Vs. State of Orissa and of this Court in (2017) SCC Online Delhi 7581 D.N. Upadhyay Vs. CBI.

9. Though the Bail Application can be decided even without considering the additional documents placed on record, however since a legal issue arises and needs determination, this Court is proceeding to decide this application before deciding the Bail Application on merits.

10. By way of the application the petitioner not only seeks to place on record the documents along with the charge-sheet but also transcripts of the messages from his mobile phone received pursuant to an application filed by

the petitioner under Section 91 Cr.P.C. which are the clone copy of the petitioner's own mobile which would have revealed his conversations on whatsapp with the deceased and her family members. Rest of the documents sought to be placed on record by the present application are part of charge-sheet and thus no objection has been raised qua the said documents. As noted above, the prosecution never intended to rely upon these documents i.e. the transcripts from the clone copies of the mobile phones though these mobile phones, I-Pads, laptops were seized during the course of investigation but were sent to the FSL only after the petitioner filed an application under Section 91 Cr.P.C. seeking relevant documents.

11. In State of Orissa Vs. Debendra Nath Padhi (supra) the three Judge Bench of the Supreme Court held that at the stage of consideration as to whether the charge is required to be framed or not against the accused, the record of the case as filed by the prosecution and documents submitted therewith could only be looked into. Referring to Section 227 Cr.P.C. the Supreme Court held that on the reading of Section 227 Cr.P.C. it is evident as to whether there was sufficient ground for proceeding against the accused has to be determined by the Judge "*upon consideration of the record of the case and the documents submitted therewith*". Thus in terms of the ingredients of provision under Section 227 Cr.P.C. the Supreme Court held that the documents of the defence cannot be produced at this stage and Section 91 Cr.P.C. does not confer any right on the accused to produce documents in his possession to prove the defence at that stage.

12. Undisputedly at the time of hearing on charge neither can there be a piecemeal appreciation of evidence and the material and documents placed by the prosecution would have to be taken on its face value and on the basis

of appreciation of evidence the Court cannot come to the conclusion that the witness of the prosecution was not a reliable witness unless the witness/ witnesses have entered the witness box and been cross-examined. However as noted above in Debendra Nath Padhi, the issue which arose for consideration before the Supreme Court was whether the Court can consider only documents which form part of the charge-sheet or even documents of the defence at the stage of charge. The issue in the present application is whether the Court can look into the documents which have been seized during the course of investigation and deliberately kept out though may be a relevant material during the course of investigation and supplied to the accused legally pursuant to his application under Section 91 Cr.P.C. while deciding the bail application.

13. In D.N. Upadhyay (supra) this Court was dealing with the issue as to whether documents seized by the Police during investigation and not relied upon with the charge-sheet can be retained by the investigating agency and not returned to the accused or the person authorized to retain those documents. Considering the various provisions this Court held that since the documents are not even relied upon documents/ case property, the CBI cannot object to the return of the same to its authorized person. In the said case since the CBI did not object that the petitioner was the rightful owner of the documents, this Court directed CBI to release the documents seized to the petitioner therein forthwith.

14. There is yet another facet to the issue raised in the application i.e. of a fair investigation as held by the Supreme Court in the decision reported as (2010) 6 SCC 1 Manu Sharma Vs. State (NCT of Delhi). The role of investigating agency during the course of investigation is to unearth the truth

and place complete facts before the Court. If it is held that the documents seized by the Police which in its own discretion it may not use and also not be permitted to be used by the accused, the same would be a travesty of justice, for in a given case an unfair investigating officer would retain the documents in favour of the accused and since they are not part of the charge-sheet the same cannot be relied during the course of the trial as the prosecution would not rely on it and the accused is forbidden as he is not in possession of the document. The same would be a clear case of prejudice.

15. Emphasizing on the essential requirement of a free and fair investigation, Supreme Court in the decision reported as (2010) 6 SCC 1 Manu Sharma Vs. State (NCT of Delhi) held:

“197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.

198. A person is entitled to be tried according to the law in force at the time of commission of offence. A person could not be punished for the same offence twice and most significantly cannot be compelled to be a witness against himself and he cannot be deprived of his personal liberty except according to the procedure established by law. The law in relation to investigation of offences and rights of an accused, in our

country, has developed with the passage of time. On the one hand, power is vested in the investigating officer to conduct the investigation freely and transparently. Even the courts do not normally have the right to interfere with the investigation. It exclusively falls in the domain of the investigating agency. In exceptional cases the High Courts have monitored the investigation but again within a very limited scope. There, on the other a duty is cast upon the Prosecutor to ensure that rights of an accused are not infringed and he gets a fair chance to put forward his defence so as to ensure that a guilty does not go scot-free while an innocent is not punished. Even in the might of the State the rights of an accused cannot be undermined, he must be tried in consonance with the provisions of the constitutional mandate. The cumulative effect of this constitutional philosophy is that both the courts and the investigating agency should operate in their own independent fields while ensuring adherence to basic rule of law.

199. It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society.

200. In *Kashmeri Devi v. Delhi Admn.* [1988 Supp SCC 482 : 1988 SCC (Cri) 864 : JT (1988) 2 SC 293] it has been held that the record of investigation should not show that efforts are being made to protect and shield the guilty even where they are police officers and are alleged to have committed a barbaric offence/crime. The courts have even declined to accept the report submitted by the investigating officer where it is glaringly unfair and offends basic canons of the criminal investigation and jurisprudence. *Contra veritatem lex nunquam aliquid permittit*: implies a duty on the court to accept and accord its approval only to a report which is the result of

faithful and fruitful investigation. The Court is not to accept the report which is contra legem but (sic) to conduct judicious and fair investigation and submit a report in accordance with Section 173 of the Code which places a burden and obligation on the State Administration. The aim of criminal justice is two-fold. Severely punishing and really or sufficiently preventing the crime. Both these objects can be achieved only by fair investigation into the commission of crime, sincerely proving the case of the prosecution before the court and the guilty is punished in accordance with law.

201. Historically but consistently the view of this Court has been that an investigation must be fair and effective, must proceed in proper direction in consonance with the ingredients of the offence and not in haphazard manner. In some cases besides investigation being effective the accused may have to prove miscarriage of justice but once it is shown the accused would be entitled to definite benefit in accordance with law. The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation. These well-established principles have been stated by this Court in Sasi Thomas v. State [(2006) 12 SCC 421 : (2007) 2 SCC (Cri) 72] , State (Inspector of Police) v. Surya Sankaram Karri[(2006) 7 SCC 172 : (2006) 3 SCC (Cri) 225] and T.T. Antony v. State of Kerala[(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] .

202. In Nirmal Singh Kahlon v. State of Punjab [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] this Court specifically stated that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India. We have referred to this concept of judicious and fair investigation as the right of the accused to fair defence emerges from this concept itself. The accused is not subjected to harassment, his right to defence is not unduly hampered and what he is entitled to receive in accordance with law is not denied to him contrary to law.

203. It is pertinent to note here that one of the established canons of just, fair and transparent investigation is the right of

defence of an accused. An accused may be entitled to ask for certain documents during the course of enquiry/trial by the court. Let us examine the extent of this right of an accused in light of the statutory provisions and the manner in which the law has developed under the criminal jurisprudence. To understand this concept in its right perspective we must notice the scheme under the provisions of Sections 170 to 173 of the Criminal Procedure Code. All these provisions fall under Chapter XII of the Code which deals with information to the police and their powers to investigate.

204. The power of the police to investigate freely and fairly is well recognised and codified in law. In terms of Section 170, the investigating officer when satisfied that sufficient evidence or reasonable grounds exist he shall forward the accused under custody to a Magistrate along with such weapons or articles which may be necessary to be produced before the court. Section 172 of the Code has a meaningful bearing on the entire investigation by a police officer. It is mandatory for him to maintain a diary under this chapter where he shall enter the day-by-day proceedings in the investigation carried out by him. He is expected to mention time of events and his departure, reporting back and closing of the investigation, the place/places he visited and the statements he recorded during investigation. The statement of the witness is recorded during the investigation under Section 161 shall be inserted in that diary.

205. A criminal court is empowered under Section 172(2) to send for the diaries and they could be used by the court but not as evidence in the case but to aid it in such inquiry or trial. However, sub-section (3) of the same section provides that neither the accused nor his agents shall be entitled to call for such diaries, nor they are entitled to see them but it is only where the police officer who makes them to refresh his memory or the court uses them for the purposes of contradicting such police officers in terms of Section 172 then Section 161 or Section 145 provisions of the Evidence Act would apply.

206. Section 173 commands the investigating agency to complete the investigation expeditiously without unnecessary delay and when such an investigation is completed, the officer

in charge of the police station shall forward to a Magistrate empowered to take cognizance of offence on a police report the details in the form as may be prescribed by the State Government and provide the information required under this section.

207. The provisions of Section 173(5) contemplate and make it obligatory upon the investigating officer where the provisions of Section 170 apply to forward to the Magistrate along with his report, all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation in terms of Section 170(2) of the Code. During investigation the statement recorded under Section 161 of all the persons whom the prosecution proposes to examine as witnesses shall also be sent to the Magistrate. Some element of discretion is vested with the police officer under Section 173(6): where he is of the opinion that any such statement is not relevant to the subject-matter of the proceedings or its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement requesting a Magistrate (sic to exclude) that part from the copies to be granted to the accused and stating his reason for making such a request. Sub-section (7) of the same section is indicative of another discretion given to the police officer under law that where he finds it convenient, he may furnish the copy of documents referred to in sub-section (5) of the section.

208. Section 173(8) empowers an investigating officer to submit a further report if he is able to collect further evidence. Once this report in terms of Section 173 is received the court shall proceed with the trial of the case in accordance with law.

209. What is the significance of requiring an investigating officer/officer in charge of a police station to maintain a diary? The purpose and the object seems to be quite clear that there should be fairness in investigation, transparency and a record should be maintained to ensure a proper investigation.

210. In Habib Mohammad v. State of Hyderabad [AIR 1954 SC 51 : 1954 Cri LJ 338] this Court stated the principle of law that the criminal court may send for the police diaries of a case

under inquiry/trial in such court and may use such diaries, not as evidence in the case but to aid in such inquiry or trial. It seems to the Court that the learned Judge was in error in making use of the police diaries at all in his judgment and in seeking confirmation of his opinion on the question of appreciation of evidence from statements contained in those diaries. The proper use of diaries he could make in terms of Section 172 CrPC by elucidating points which need clarification. The Court in this case was primarily concerned with the argument that the diaries were not produced.

211. Further in Khatri (IV) v. State of Bihar [(1981) 2 SCC 493 : 1981 SCC (Cri) 503 : AIR 1981 SC 1068] , though in a writ petition, this Court was concerned with a question whether the documents called for by the Court vide its order dated 16-2-1981 liable to be produced by the State or production of those documents is barred under Sections 162 and 172 of the Code and the petitioners in those cases are not entitled to see such documents. The Court rejecting the contention held as under: (SCC p. 506, para 9)

“9. ... It is common ground that Shri L.V. Singh was directed by the State Government under Section 3 of the Police Act, 1861 to investigate into twenty-four cases of blinding of undertrial prisoners where allegations were made by the undertrial prisoners and first information reports were lodged that they were blinded by the police officers whilst in police custody. Shri L.V. Singh through his associates carried out this investigation and submitted his reports in the discharge of the official duty entrusted to him by the State Government. These reports clearly relate to the issue as to how, in what manner and by whom the twenty-four undertrial prisoners were blinded, for that is the matter which Shri L.V. Singh was directed by the State Government to investigate. If that be so, it is difficult to see how the State can resist the production of these reports and their use as evidence in the present proceeding. These reports are clearly relevant under Section 35 of the Evidence Act....”

212. In Malkiat Singh v. State of Punjab [(1991) 4 SCC 341 : 1991 SCC (Cri) 976] this Court reiterated the principle that use

of entries in the case diary is really of no use and is of benefit to the accused but unless the investigating officer or the court uses the entries in the case where either to refresh the memory or contradicting the investigating officer's previous statement under Section 161 in terms of Section 145 of the Evidence Act the entries can be used by the accused as evidence. The free use thereof is not permissible under defence.

213. In Mukund Lal v. Union of India [1989 Supp (1) SCC 622 : 1989 SCC (Cri) 606 : AIR 1989 SC 144] , this Court clearly stated the denial to the accused of an unfettered right to make roving inspection of the entries in the case diary regardless of whether these entries are used by the police officer concerned to refresh his memory or regardless of the fact whether the court has used these entries for the purpose of contradicting such police officer cannot be said to be unreasonable. This was treated to be a very important safeguard as the legislature has reposed complete trust in the court which is conducting the inquiry or the trial and has empowered the court to call for these diaries therefore the right of the accused is not unfettered but in fact is limited as noticed.

214. Usefully, reference can also be made to the judgment of this Court in Shamshul Kanwar v. State of U.P. [(1995) 4 SCC 430 : 1995 SCC (Cri) 753 : AIR 1995 SC 1748] wherein this Court while issuing direction for requiring the State to make a general hearing in terms of Section 172 of the Code clearly stated that it was mandatory for the police officer-in-charge to maintain the diary in terms of the said provision and there is jurisdiction in the Criminal Code to call such diaries and make use of them not as evidence but only to aid such inquiry or trial. It is generally confined to utilise the information therein as foundation for the question put to the witnesses, particularly, to the police witnesses where the police officer has used the entries to refresh his memory or if the court uses them for the purpose of contradicting such police officer then provisions of Sections 161 or 145, would be applicable. The right of the accused to cross-examine the police officer with reference to the entries in the general diary is very much limited in extent and even that limited scope arises only when the court uses the

entries for the aforesaid purposes. The investigating officer has a right to refresh his memories and can refer to the general diary. The court has power to summon the case diary in exercise of its powers and for the purposes stated. The accused is vested with the power of making use of the statements recorded during investigation for the purposes of contradiction and copies thereof the accused is entitled to see in terms of Section 207 of the Code. (See State of Kerala v. Babu [(1999) 4 SCC 621 : 1999 SCC (Cri) 611] and State of Karnataka v. K. Yarappa Reddy [(1999) 8 SCC 715 : 2000 SCC (Cri) 61] .)

215. As is evident from the consistently stated principles of law that right of the accused in relation to the police file and the general diary is a very limited one and is controlled by the provisions aforesaid. But still the accused has been provided with definite rights under the provisions of the Code and the constitutional mandate to face the charge against him by a fair investigation and trial. Fairness in both these actions essentially needs to be adhered to.

216. Under Section 170, the documents during investigation are required to be forwarded to the Magistrate, while in terms of Section 173(5) all documents or relevant extracts and the statement recorded under Section 161 have to be forwarded to the Magistrate. The investigating officer is entitled to collect all the material, which in his wisdom is required for proving the guilt of the offender. He can record statement in terms of Section 161 and his power to investigate the matter is a very wide one, which is regulated by the provisions of the Code. The statement recorded under Section 161 is not evidence per se under Section 162 of the Code. The right of the accused to receive the documents/statements submitted before the court is absolute and it must be adhered to by the prosecution and the court must ensure supply of documents/statements to the accused in accordance with law. Under the proviso to Section 162(1) the accused has a statutory right of confronting the witnesses with the statements recorded under Section 161 of the Code thus indivisible.

217. Further, Section 91 empowers the court to summon production of any document or thing which the court considers

necessary or desirable for the purposes of any investigation, inquiry, trial or another proceeding under the provisions of the Code. Where Section 91 read with Section 243 says that if the accused is called upon to enter his defence and produce his evidence there he has also been given the right to apply to the court for issuance of process for compelling the attendance of any witness for the purpose of examination, cross-examination or the production of any document or other thing for which the court has to pass a reasoned order.

218. The liberty of an accused cannot be interfered with except under due process of law. The expression “due process of law” shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforesaid. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make

an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression “documents on which the prosecution relies” are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially.

222. The concept of disclosure and duties of the Prosecutor under the English system cannot, in our opinion, be made applicable to the Indian criminal jurisprudence stricto sensu at this stage. However, we are of the considered view that the doctrine of disclosure would have to be given somewhat expanded application. As far as the present case is concerned, we have already noticed that no prejudice had been caused to the right of the accused to fair trial and non-furnishing of the copy of one of the ballistic reports had not hampered the ends of justice. Some shadow of doubt upon veracity of the document had also been created by the prosecution and the prosecution opted not to rely upon this document. In these circumstances, the right of the accused to disclosure has not received any setback in the facts and circumstances of the case. The accused even did not raise this issue seriously before the trial court.

[Emphasis Supplied]”

16. This Court at the moment is not dealing with Section 227 Cr.P.C. wherein it is qualified that upon consideration of the records of the case and the documents submitted therewith the Court has to apply its mind whether there is sufficient ground for proceeding against the accused or not. The

present is a Bail Application before this Court under Section 439 Cr.P.C. which reads as under:

“439. Special powers of High Court or Court of Session regarding bail.

(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub- section;

(b) that any condition imposed by a Magistrate when releasing an person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

17. The three important considerations for grant or refusal of bail as re-stated by the Hon'ble Supreme Court repeatedly are (i) The nature of accusation, the nature of supporting evidence and the severity of punishment in case of conviction (ii) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and (iii) Prima facie satisfaction of the Court in support of the charge. [See State of Maharashtra Vs. Sitaram Popat Vetal & Anr. (2004) 7 SCC 521; Ram Govind Upadhyay

Vs. Sudarshan Singh (2002) 3 SCC 598; Puran Vs. Rambilas (2001) 6 SCC 338 and Kalyan Chandra Sarkar Vs. Rajesh Ranjan (2004) 7 SCC 528]

18. Indubitably, as contended by the learned counsel on the basis of the decision in (2019) SCC Online 461 National Investigating Agency Vs. Zahoor Ahmad Shah Watali the Court at the time of grant of bail is not to elaborately examine or dissect the evidence and is merely expected to record the finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise. However, in the said case the High Court while granting bail to the accused noted that the evidence in the form of statement of witnesses recorded under Section 161 Cr.P.C. was not admissible, nor were the documents pressed into service by the investigating agency were admissible and that it was unlikely that the documents were recovered from the accused therein, on which the Supreme Court held that the approach of the High Court in completely discarding the statement of the protected witness under Section 164 Cr.P.C. on the ground that the same was kept in a sealed cover and not even perused by the designated Court, was in complete disregard of the duty of the Court to record its opinion that the accusation made against the concerned accused is prima facie true or otherwise.

19. During the course of arguments this Court posed to learned counsel for the complainant that in a given case where an accused has been alleged to have assaulted the complainant on a particular day and with the Bail Application the accused places on record impeccable evidence in the form of his entry in the passport showing that the accused on the relevant date was not even in the country, would the Court be not bound to consider that aspect on a verification received to come to the conclusion that whether the

accusation against the petitioner is prima facie true or otherwise. The answer of learned counsel for the complainant is in the positive and he states that such a material would have to be looked into.

20. In view of the aforesaid discussion, since documents beyond the chargesheet sought to be placed were transcripts of the conversation prior to the death of Anissia between petitioner and Anissia and her family members which were duly seized and retained by the investigating agency and as per the statement of the investigating officer not relied upon, cannot be held to be non-permissible to be placed before the Court for consideration particularly when a very fair opportunity has been granted to the State also to place on record whatever material the State so wishes, as also verify the genuineness of the transcript to which till date there is no challenge. Needless to note that in response to the present application the State has also placed voluminous record retrieved from the phones of Mayank, Nillum Batra, R.S. Batra, etc. which have been taken on record. Case of the prosecution is that the I-Phone and I-Pad of Anissia Batra is password protected and thus the same could not be opened and hence efforts are being made to get the same opened.

21. Application is thus disposed of taking the documents filed by the petitioner on record.

BAIL APPLN.3003/2018

1. By this petition the petitioner seeks bail in case FIR No. 185/2018 under Section 304B/34 IPC registered at PS Haus Khas. The FIR in question was registered on the complaint of Nillum Batra, mother of Anissia Batra who committed suicide on 13th July, 2018 at about 4.15 PM at her residence from where she was taken to MAX Healthcare Hospital at 4.35

PM by the petitioner/ her husband with the history of unconsciousness at the time of arrival and was declared dead at 5.50 PM.

2. Contentions of learned counsel for the petitioner are that the petitioner's marriage to Anissia, the deceased was a love marriage solemnized on 23rd February, 2016 when the deceased was approximately 37 years of age and petitioner was 38 years of age and this was the second marriage of the petitioner. The deceased had a prior live-in relationship which had gone sour leading to her filing a case of rape against her ex-boyfriend contending that he vitiated promise of marriage. Pursuant to the registration of FIR on 14th July, 2018 under Section 304B IPC, the petitioner was arrested on 16th July, 2018 and thus has been in custody since then. Charge-sheet for offences punishable under Section 304B/498A/34 IPC was filed on 12th October, 2018 on which cognizance was taken, followed by filing of supplementary charge-sheet on 31st October, 2018. Parents of the petitioner who surrendered to custody have already been granted bail by this Court vide order dated 20th November, 2018. Bail Application of the petitioner has been rejected by the learned Trial Court on 15th December, 2018, hence this petition.

3. Learned counsel for the petitioner further contends that in the allegations or documents there is no proof of any monetary transaction. Even the sale consideration of Vasant Kunj flat of the deceased which was sold, was deposited in the accounts of the deceased and her mother. There is no allegation of demand of dowry in the various communications and documents which form part of charge-sheet prior to the death. Even in the email dated 23rd June, 2018 to her lawyer Dr. Aman Hingorani wherein the deceased had in detail set out all that transpired during the subsistence of

marriage, there is no allegation for harassment in relation to demand of dowry and thus the learned Advocate advised Anissia to file a case of domestic violence. Even in the messages inter-se the families there is no allegation that the petitioner or his family members demanded any dowry. The petitioner had time and again showered expensive gifts on the deceased and her family members. On the first wedding anniversary he presented the deceased with a ring worth ₹16 lakhs and purchased a BMW car in December 2017 for the deceased on her birthday for which installments amounting to ₹22 lakhs have been paid till June 2018. The petitioner also gave pocket money to the deceased approximately ₹35,000/- per month which fact is duly reflected in the bank statement including that of July 2018. Besides the deceased was given hand-bags, shoes, watches, etc. Petitioner also gave costly gifts to the brother of the deceased. The petitioner stayed in rental accommodation at Safdarjung Development Area (SDA) and paid a sum of ₹67,000/- per month from February 2016 till July 2017 and was incurring day-to-day expenses; and from July 2017 the petitioner and deceased resided in the house owned by the parents of the petitioner at N-116, 1st Floor, Panchsheel Park. Even the personal expenses of the deceased were met by the petitioner. In April 2018 the petitioner even offered to give ₹1 crore to the deceased so that she could buy a house in her name in Delhi.

4. Learned counsel for the petitioner contends that the investigation has been unfair as the bank statements of the deceased which would have demonstrated that the deceased was transferring money to her family members has not been placed on record. Despite the mobile phones of the petitioner, deceased and other family members seized, conversations therein

were not relied upon by the prosecution as was specifically stated by the investigating officer when the petitioner filed an application under Section 91 Cr.P.C. before the learned Trial Court. For the first time allegations of dowry are introduced in the supplementary statement of Nillum Batra and R.S. Batra wherein the date has been tampered from 11th September 2018 to 11th August, 2018. The email dated 23rd June, 2018 was written on a legal advice with the intent to initiate proceedings of domestic violence and maintenance and the entire material recorded therein was created post the meeting with a lawyer on or about 9th June, 2018. The deceased was under depression which fact stands admitted by both the parents of the deceased. Deceased had been consulting a Doctor at Chandigarh and was under medication. Even on the allegations of physical cruelty reading the various conversations it is evident that the deceased used to first get angry and would also abuse, provoke and hit the petitioner. Along with the charge-sheet a complaint dated 27th June, 2018 has been filed, however the same is different from the one available on the website of Quint DNA. Admittedly the petitioner and the deceased were living separately since 7th June, 2018 till 7th July, 2018 and there was no knowledge or belief that they would start residing together. Deceased and petitioner were talking about amicable separation through mutual consent till 4th July, 2018 i.e. one week after the complaint dated 27th June, 2018 was made.

5. The petitioner had already expressed his apprehension to the mother of the deceased that the deceased was threatening him that she would harm herself and blame the petitioner. Though prosecution alleges earlier complaints of domestic violence, however on enquiry all those complaints were filed as there were no injuries and it was noted that there was “*kaha*

Suni” between the husband and wife on domestic talks. Further the said calls were made after the petitioner had moved out of the matrimonial house and the deceased was residing with her parents. On 11th June, 2018 the petitioner even messaged father of the deceased that he would be coming to collect his clothes as he wanted everything to happen peacefully without trouble. Petitioner himself requested the mother of the deceased to come to Delhi in view of the erratic behavior of the deceased and the fights between them to which the deceased reacted adversely.

6. On the intervening night of 7th and 8th June, 2018 mother of the deceased sent a message to Sushma Singhvi, mother of the petitioner, because the petitioner had already told the mother of the deceased that he had saved the whatsapp messages between them and to circumvent those incriminating messages accepting her daughter’s mental illness she sent the message to his mother. The deceased and petitioner were not residing together as noted above from 7th June, 2018 to 7th July, 2018, however from 8th July, 2018 they started residing together but in different rooms though under the same roof. It is only on the advice of the uncle of the petitioner that the petitioner and deceased decided to start residing together but in separate rooms. On the fateful day petitioner had lunch in the room of the deceased at around 1 - 1.30 PM whereafter they went out and she also spoke to Seema Malik on phone. On every small little issue the deceased used to call the PCR, however on that date she did not make any phone call as there was no apprehension.

7. The messages of the day do not indicate that any cruelty was committed by the petitioner much less in the context of dowry harassment. The viscera report of the deceased clearly indicates that it contained ethyl

alcohol 298 mg/ 100 ml of blood which causes amnesia i.e. stage of black out. Version of the deceased that she was locked up was improbable on the perusal of the site plan itself. An independent witness Naveen Kumar, the construction worker who had seen Anissia saw her with her mobile in her hand and thought that she was taking selfie and within 2-3 minutes when he looked up he saw her hanging on the outer side of the railing. He called his fellow labourer. In the meantime the girl left the railing and fell down. Even the FSL team after inspection of the crime scene opined that possibility of suicide fall could not be ruled out. In the conversation between the deceased and her mother in April, 2018 itself the deceased had clarified that she was buying time and would move out once she had an apartment.

8. Responding to the statements of Seema Malik and Aman Hingorani pressed in by the State, it is stated that the same are after-thought and on legal advice. The deceased having made up her mind to sue the petitioner and separate from him once she gets an apartment, the documents and facts were created to frame up the petitioner. Responding to the emails/chats petitioner claims that in each of the incident the deceased had become violent and aggressive and in her email to the lawyer has exaggerated the facts. The deceased had earlier also hit herself with a bottle and received a cut on her thumb which in her email has been exaggerated that she was *“lying in a pool of blood”*. The fact that the deceased used to get angry and irk on the smallest of things has been admitted by the deceased in her email to Dr. Aman Hingorani also.

9. Learned Standing Counsel for the State submits that though the FIR was registered on the statement of Nillum Batra, the mother of the deceased,

however three statements of Maj.Gen. Batra were recorded, two on 14th July, 2018; first to the SDM and the second to the investigating officer and the third statement i.e. supplementary statement was recorded by the I.O. on 11th August, 2018. However, inadvertently the date of 11th September, 2018 was noted on the statement which was later corrected. The fact that the statement was recorded on 11th August, 2018 is corroborated by the seizures and visits of witnesses. In his statement Maj.Gen. Batra has clearly stated that there was a demand of money prior to the marriage. Further, gold jewelleryes and ginnis were given in January 2016 i.e. prior to the marriage. When petitioner and deceased were on their honeymoon at Dubai, the petitioner assaulted Anissia, pictures whereof were sent to her parents. In fact Nillum Batra advised Mayank and reminded of his promise that he would not touch the alcohol and would not raise finger on her whatever maybe the provocation and his first priority was to get her back safely and then once he gets back to Delhi he could discuss the matter with his parents and let them advise him.

10. Learned Standing Counsel states that the manner of cruelty which was inflicted on the Anissia at Dubai during honeymoon continued till the last date i.e. 13th July, 2018. Even on 13th July, 2016 the parents of Anissia had to call their daughter to Chandigarh. In February 2017 on the first marriage anniversary demands were made by the parents. The petitioner again assaulted Annisia on 12th April, 2017 for which Nillum Batra sent a message to Sushma Singhvi, mother of Mayank. On 6th June, 2018 Mayank not only assaulted Anissia but also his mother-in-law/Nillum Batra, which fact is also mentioned in the email to Dr. Aman Hingorani. On 9th June, 2018 a DD

entry was lodged in this regard at PS Panchsheel Park followed by DD entry No. 81A on 11th June, 2018.

11. Anissia sold her property at Vasant Kunj on 12th June, 2018 out of which a sum of ₹12 lakhs was kept by Anissia and the balance consideration of ₹1,08,00,000/- was transferred to the account of Nillum Batra. It is the case of the prosecution in the form of statement of father of the deceased that after the sale of the flat at Vasant Kunj, Mayank became more aggressive. Even in the second supplementary statement recorded by the I.O. on 14th July, Major Batra had stated that the violence by the petitioner increased as money from the sale of the flat was refused to be given. The petitioner went on to the extent of hacking the emails of Anissia which fact she had to bring to the notice of learned counsel. There is ample evidence in the form of statements of Dr. Aman Hingorani, friends of Anissia, brother of Anissia Karan Batra and the servant which shows that there was continuous physical cruelty on the deceased by the petitioner. Even in her message to Aman Hingorani on 13th July at 4.12 PM Anissia stated that she was going to kill herself because Mayank had driven her to it. Prior to making a call to Aman Hingorani she made a phone call to Seema Malik that Mayank had locked her up and she should please call the Police if she can. She then sent a message to Seema Malik stating that she was going to kill herself that day because Mayank had driven her to that.

12. In his chats the petitioner admitted that he raised hands on Anissia. Not only was the petitioner inflicting physical cruelty but also mental cruelty on the deceased as he was indulging with other women, doubting the character of the deceased, emotionally hurting her and taking steroids. Though learned counsel for the petitioner claims that the petitioner was quite

well-off and needed no money, however from the investigation carried out it was evident that the petitioner had taken ₹10 lakhs from his friends and did not return the same for 2 years. Even in her subsequent email to Aman Hingorani she stated that she had evidence in her I-Phone and I-Pad and would give it to him. The I-Phone and I-Pad could not be opened being password protected and efforts are being made to retrieve the same.

13. Learned counsel for the complainant contends that before the death of Anissia, prior PCR calls and complaint dated 27th June, 2018 was got registered. There is overwhelming evidence on record to show that the petitioner has committed the offence at least punishable under Section 306 IPC which is a serious offence. Statements of public witnesses namely Kanchan Sharma, Niharika Singh, Raman Ahuja, Seema Malik, Bhawna Dutt and Dr. Aman Hingorani are yet to be recorded. The allegations of the prosecution are corroborated by contemporary whatsapp messages. The state of mind of the deceased is evident from the messages sent by her soon before her death to Seema Malik and Aman Hingorani.

14. Heard learned counsel for the petitioner, State and the complainant at length. FIR No.185/2018 was registered on the statement of Smt.Nillum, mother of deceased Anissia Batra recorded by the SDM, Hauz Khas wherein she stated that she married her daughter Anissia Batra to Mayank Singhvi on 23rd February, 2016. After a week of marriage the couple went for honeymoon to Dubai when on the second day Mayank assaulted Anissia in hotel lobby and a photo of the injury mark was sent by Anissia to her. On the complainant's advice that Anissia should move to another room for her safety, on the next day, Anissia left the hotel, joined a female friend and came to India. On the complainant's advice, her daughter discussed the

issue with her parents-in-law however, they accused Anissia of instigating Mayank due to which the situation became ugly. Parents of Mayank assured the complainant's husband that no such incident will occur in future and that Mayank will also not take liquor. However, within a week, Mayank again abused and assaulted Anissia using vulgar words for her whole family. Due to the misconduct of Mayank, the complainant in order to ensure her daughter's safety, came to Delhi on 14th April, 2018 and stayed for one month. During the said period also, Mayank pulled the hand of her daughter and tried to throw her out of the house. Due to the behavior of Mayank, her daughter used to remain sad, so the complainant again came to Delhi on 5th June, 2018.

15. On 6th June, 2018 in the night again a quarrel took place between them and when the complainant went to the room of her daughter and son-in-law, she saw that Anissia was sitting on the bed quietly whereas Mayank was talking on phone to his parents, who were in London, and his parents were instigating Mayank due to which he became mad in anger. Mayank hit her daughter with such a force that his bracelet also came out of his hand. On the next day, parents of Mayank came back from London and came to the house of Mayank in the evening. However, they were rude with their daughter-in-law and the complainant. Police was called at the house on 9th June, 2018. During the course of incident, son of the complainant Karanjit Batra was also present. On the assurance of one of the relatives that it would not happen again, they went back to Chandigarh. It is for the first time that the complainant's family came to know that Mayank was also a divorcee and needed mental treatment. The complainant along with her husband and son came back to Chandigarh on 29th June, 2018. Mayank was

demanding money from her daughter again and again. On 13th July, 2018 at about 12.11 P.M. the complainant sent a message to her daughter on WhatsApp to know her well being but no reply was received. Before that, her daughter at about 11.40 A.M. stated that Mayank was in one room and they were in separate rooms. Two messages were received from Mayank at 2.13 P.M. and 2.24 P.M. wherein he used indecent words to the complainant. Later, her husband told her that their daughter had jumped from third floor and has been shifted to the hospital. Complainant sought legal action against her son-in-law Mayank and his parents. Besides the statement of the mother, the SDM also recorded the statement of the father of the deceased Anissia Batra namely Ropinder Singh Batra and directed that FIR be registered under Section 304B IPC.

16. During the course of investigation, it was revealed that the deceased had consulted Dr. Aman Hingorani, Advocate whose statement under Section 161 Cr.P.C. was recorded on 19th July, 2018. Dr. Aman Hingorani stated that he received a call from Ms. Anissia with reference from one Ms. Bhavna requesting for an appointment to discuss her matrimonial discourse on or around 9th June, 2018. She was highly agitated at that point of time as according to her, she was being asked to vacate her matrimonial home at N-116, Panchsheel Park, New Delhi by her husband. He gave Anissia appointment for 11th June, 2018 and after the discussion Anissia instructed him to prepare and file a domestic violence complaint and claim maintenance. He also asked her to e-mail the detailed statement of her case. On 18th June, 2018, Ms. Anissia and her parents met him at his chamber with some handwritten notes and her documents on her phone. When again he asked her to e-mail him the facts chronologically and to give him hard

copies of the documents. An e-mail was sent by Anissia to him on the evening of 23rd June, 2018 to which he responded on 24th June, 2018 asking her to send the prescribed format of the financial affidavit to him by e-mail and asked her to leave it in his chamber by 29th June, 2018 duly filed with supporting documents and other documents referred to in her statement. Since Dr.Aman Hingorani was travelling from 25th to 30th June, 2018, he advised her to talk to Ms.Priya Hingorani, Advocate in case she had any query. On or around 27th June, 2018, Anissia and her father met Ms.Priya Hingorani in the chamber and sat with Mr.Himanshu Yadav, Advocate to partly fill up the Financial Affidavit. On 1st July, 2018, he received few additional facts. Since Ms.Anissia had neither sent hard copies nor the complete financial affidavit, he called her few times but she did not pick up the phone. On 12th July, 2018, he received a call from Anissia stating that her husband had hacked her e-mail ID as he had come to know that she was taking legal advice from Dr.Aman Hingorani and suggested him that in future, they should not communicate through email. When he asked about the documents, Ms.Anissia stated that he would get the hard copies of the documents from the cyber café. On 13th July, 2018 at about 4.12 p.m. he received a WhatsApp message from Anissia's phone stating :

“I am going to kill myself today bcoz Mayank has driven me to it. I would like you to plz fight for me after I'm gone.”

17. From the WhatsApp message sent by Anissia to Dr.Aman Hingorani and also from the statement of one Navin Kumar who was working as a labourer in the adjoining house, it is evident that Anissia committed suicide after falling from the third story.

18. At this stage, it would be appropriate to note the contents of the e-mail dated 23rd June, 2018 sent by Anissia to Dr.Aman Hingorani.

“I met Mayank Singhvi for the first time on 23rd May 2015. We met through a friend who was on a date with him that evening. He then started pursuing me like a crazed man on a mission who had to get what he wants to the extent that he even followed me upto Kasuali, where I was spending my vacation with my family. Yes, I had jokingly said to him to come not realising that he would actually land up. Before the Kasauli trip when after our 2nd meeting I realised he was showing great interest in me I warned him that I was in a bad and vulnerable state at that point as I had a case going on where I had slapped a 375 and 313 section on my ex boyfriend. I made it very well aware to him that I was stuck in this mess and that he should probably not get involved with me. At that time after hearing this he assured me that he would stand by me and always be by my side and I had nothing to worry about. Hence we started chatting often after that and that’s when the Kasauli joke too came up.

Once in Kasauli he spent 3 full days with us trying not just to woo me but my father, mother and brother too.

In a month and a half from the time we met he got my name tattooed on his back putting tremendous pressure on me to consider him for marriage which by the way I had made very clear to him that I was not going to be in a flimsy relationship but a one that would lead to marriage. I was at a very low period in my life after a traumatic break up plus a court case and was extremely vulnerable. I thought that if a man tattoos a girl’s name on his body he would be serious and sincere. (I spoke to his ex girlfriend Niharika where he applied the same modus operandi of tattooing her name to on his chest which today he has covered up by another tattoo). So, from that point

I decided to give a real serious chance. Hence, started our serious relationship.

...(illegible) surprised me at that time was that in spite of having his own consulting firm (insight strategies) he was constantly around me bringing me flowers, dining me or lunching out with me or taking me to my court dates whenever they came. He spent many nights at my house and would always leave late in the morning. Never before 11 am, when I enquired about his work he told me that he had some dealings going on with some Mr. Assad for which he even borrowed about 3.5 lakhs from me which was made through a cheque transfer so shouldn't be difficult to trace (I had some 4 lakhs lying in my account at the time). I without an iota of hesitation transferred the money into his account the very next day. This must have been after some 2 months of knowing him. 9 months later, I still went ahead and married him thinking he was from a reputed family with good education.

We got married on 23rd of Feb, 2016 with families and friends from both sides in attendance. We moved into a rented accommodation in Safdarjung Development Area where the landlord was charging us a rent of Rs. 67000/- per month which later on he increased by 10 % after a year. On the 1st of March we left for our honeymoon to Dubai. He had booked us into Sofitel Jumelrah. At the reception, his debit card got declined so he asked me to pay with my credit card which at that time had a credit limit of approx 1.34 lakhs. The hotel bill was roughly 95k or a lakh. The first 2 days in Dubai were good though there was not much intimacy or sex as it should normally be when you are on your honeymoon.

On the 3rd day of our honeymoon that is 3rd March he fixed up to have dinner with his cousin Tushar Singhvi and his wife Ridhi Munol who were and still are living in Abu Dhabi. The evening started off well with all of us enjoying our drinks and snacks. After a while, since, me and Mayank were in the cousins side of the planet they decided to take us to some club/bar in Dubai. Now, we had to leave the current place that we were dining in and the restaurant was in Jumelrah Palm so the ocean was right there and I wasn't warmly glad. To get from the restaurant to the taxi you had to call the restaurant baggi cart which was taking an extremely long time to come. During that period as I was feeling extremely cold and my own husband didn't have the courtesy to lend me his jacket I got a little angry. Anyhow, finally the cart came and we made it to a taxi and finally to the bar that his cousins wanted to take us too.

At the entrance of the bar, the bar attendant refused to let us in. When I was trying to reason with her Mayank came from the side and whispered into my ear besharam aurat keep quiet. I was in shock as to how come my own husband could say those words to me and for no fault of mine. That left me in shock and I walked out of there. The other 3 (Mayank, his cousin and wife) followed me out. I was in so much shock that I didn't even wanna sit in the same taxi as my husband and ultimately I had no other choice but to go back with him in the same taxi.

The minute we sat in the taxi the abuses and allegation from his side started "hey bhagwan mein kaha phas gaya hun. Yeh besharam aurat hai. Sabne mujhe kaha tha don't marry her. Ab pachta raha huin etc and on and on it went till the 30 minute car ride ended. During that entire ride I was n... (

illegible) and just thinking what have I married and what have I married into. I didn't wanna spend my night in the same room as his so I was thinking of going to the hotel and asking for a separate room. The min we entered the hotel I went to the ladies restroom to cool off in order to approach the receptionist. After gathering my nerves when I got out of the toilet Mayank was waiting for me outside. When I tried to go to the receptionist he blocked my way and slapped me in the hallway and dragged me to lift. I went completely numb till the time I entered the room. Once in the room I finally gathered the courage to slap him back but then came the various lashes from his side. He didn't just hit me but tried to strangle me. I locked myself for good about an hr in the toilet. During the mean time, he was trying to call the lobby faking an asthma attack. Any ways, once I left t he had calmed down, I came out of the bathroom and just lay down on my side of the bed and went to sleep.

In about 2 hrs I was up as it was already morning and so was he. I was in a complete state of shock regarding the previous night's episode. Mayank then came trying to tell me that he was sorry and that he didn't know what had overcome him. I told him that I needed to be alone and I walked out of the room and messaged his and my mother. Also messaged my friend Kanchan. My own mother's advice to me at the time was first to come back to India and then we will see further. His mother's advice was get back and then we will talk. I even reached out to his friend in Dubai, Nitin Odadra but she too didn't offer me any help. I too had a friend in Dubai, Anu and finally on 5th, when we were suppose to chk out I went to her place and straight from there to the airport as our flight was at night.

The day we landed it was Mayank's mother's bday, 6th March. From the airport we went straight to his parents house to wish the mother. On reaching there knowing what all their son had done there was barely a mention of the topic. Any ways, we went back home and for good about a month I did not sleep in the same bedroom as Mayank. I was just so so deeply hurt and in shock because my previous relationship to the man had just hit me once and I had ended it. Here I had married a similar man.

On 1st May, my friend Esha Bhatia threw her bday party. Now, I was trying to move on in my life so told Mayank to come with me as I was trying to give my marriage a go. As I had recently done a flight with Esha we were both discussing about a cute guy who was on our flight just generally joking and laughing (Esha is a 45 year old woman married with 2 daughters). Esha's husband too was present in the room when we were generally discussing that guy, Mayank was sitting next to me and again when no one was looking he whispered into my ear "disgusting" and gave me an extremely dirty look. For the life of me I couldn't understand what a harmless conversation got him so edgy and mean. Anyhow, my mood was completely spoilt and we left the party and came back home.

In June 2016, my parents always drive upto Kasauli during the Kasauli week organized by the Kasauli club. It had been our tradition (my father, mother, brother and I) to every year spend that one week together no matter what. This time I got Mayank along as now we were married and I wanted to include him in everything I did. Even during that time he and I did not have any sexual relations. And during our time there he would keep picking small fights with me. When the weekend was over, he, my brother Karan and I drove back to Delhi

together as Karan had to catch his flight to Bangalore from Delhi. During the trip, Mayank and I were having our differences.

Then 13th July, 2016 my friend Sanjoy Roy was moving to Bath, U.K. He invited both me and Mayank to gymkhana as he had invited other friends basically to say goodbye to all as he was shifting base. In the evening, Mayank as usual got back from his gym and I told about the invitation. Mayank immediately refused saying, I will not go and meet any of your exes insinuating that Sanjoy and I had dated. I told Mayank as I had repeated in the past that Sanjoy and I were friends and always were and that he had invited both of us. One thing led to the other. Mayank started abusing me calling me “randi, saali tere to kaam he yahi hai.” He was slowly and steadily playing with my mental balance. He struck me again. I was sitting next to the bed where there was a glass lying on the side table. I picked up the glass and broke it on my head because I just couldn’t take anymore of his abuses and insinuations. He immediately picked up the edge of a glass piece saying “tu mujhe phasana chahti hai ab mein tujhe phasaunga” and he cut himself deep on his forearm with that glass piece. There was blood everywhere. His and mine both. He then called his parents and asked them to come to SDA where we were staying. His father, mother both came and from the minute they entered that door all 3 (father, mother, Mayank) started verbally lashing out on me saying.(illegible) sister theek kehthi thi. Iske saath ab nahi chal sakta....Rubi Ji (my father) ko abhi call karo... yeh ladki apne aap ko kya smajhti hai and all this was going on while I was lying in my own pool of blood on the bed. I then just get up while the 3 of them were still shouting at me and just went to the bathroom, locked it and just stood under the shower to wash off all my blood.

Finally, when I came out the mother and father had left. Mayank had moved to the guest room and I was more than happy. I had cut my thumb very badly which I realised the next day and Mayank volunteered to take me to see a doc. His mother had fixed me up with max clinic Panchsheel. When we reached his mother was already waiting there. Now, after what had transpired the day before I didn't want to see that woman's face. So she left and Mayank till date holds that against me.

On July 16th, I booked my tkt for Chandigarh where my parents were staying. I was just so traumatised and so hurt by this family that I just wanted to get away. I spent a week with my parent trying to recoup and build my strength.

11th August, again in the process to salvage my marriage, we decided to go to Phi Phi Islands, Thailand on a holiday. It was a 3 days trip. Again due to some reason his card did not work and again he asked for my credit card (this is a very important point to be noted that his card has never worked. Till now, he has always used my card which later of course he pays back). During that trip, for the very first time a woman sent me a msg through Facebook Messenger warning me of my husband's flirtatious activities (I will give copies of that chat too). During that trip we had sexual intercourse twice. We stayed a night in Bangkok where again we had a fight because he got angry walking the sun. 29th September came and we celebrated the day we officially got engaged. That day passed peacefully.

Mayank's birthday came on 10th of October and I made all efforts to make it a happy one. Whenever, there has been an occasion, I have always included his parents and this day was no exception. Only the 4 of us went for dinner. Then come

Diwali season and we had a party at home where we invited friends from both our sides and that too went well. The day off Diwali was again spent with Mayank and his parents.

Mayank and I again fought beginning Nov (reason can't remember but snap shot there). So finally as I was so much in pain and agony bcoz of the ...(illegible) fights and hitting that on 6th of Nov 2016, I finally adopted a dog from this adoption drive that took place in the select city walk, Saket. My dog zoo (... pugsy as named by the shelter) entered our life. The minute I got the dog Mayank was most apprehensive. But I ignored it all. Anyhow, through this entire process I kept drowning further and further into a state of sadness.....

Came December and Mayank joined country garden (a Chinese real estate company) who he is still presently employed with as senior investment director. End of December, again in order to mend our relationship, just the two of us decided to go to Goa for new year. There also the 3 days that we were we had no sexual relations and on 31st night we again fought. Reason being Mayank and I had gone to the beach to see the fireworks. Yes we were both a couple of drinks down. Once the fireworks were over we got back to the hotel (hard rock cafe) around 12:45 am. The hotel had done their own new year arrangements with music and drinks and food. The party was alive there and everybody (the hotel guests) were dancing to the beats of English retro music. They were playing the kind of music which I thoroughly enjoy so I asked Mayank lets sit for a while here, have another drink and then retire for the night. Mayank doesn't dance though that's what I would have preferred to do. At the very min that I made that request Mayank again threw a fit claiming that he just wanted to sleep and that he was tired (which apparently all he

wants to do when he isn't working or gyming). The mood was ruined along with the night. So we went straight up to our room and had a bit of a quarrel between us over this where I told him everybody was downstairs enjoying, dancing while we were cooked up in our room fighting over such a small matter. Any ways we both went to bed fighting again.

The next morning we checked out took our flight and flew back to Delhi. We had left our dog at a shelter to be looked after while we were away, so from the airport we made a stop picked him up and took him home with us. Our flight carried on for almost a week where both of us didn't talk to each other. I would just go about my duties mechanically and the only solace I would find would be with my dog.

Came Feb and as a dutiful daughter in law I celebrated my in laws anniversary with them on 5th Feb.

Our 1st anniversary too was approaching on 23rd Feb and for this my parents invited both me and Mayank and his parents to celebrate it with them in Chandigarh. His parents stayed in my parents house while me and Mayank stayed at Marriott..

My parents threw a lavish party for us which was attended by his parents and friend's of my parents. I hoped that things would improve now.

....(illegible) March was a happy one.

Around the 12th of April we got into an argument again in front of his friends Yudhvir and Monika who had invited home for dinner, over a small issue. After they left, I was so angry with Mayank for the way he had behaved with me in front of

them, he started abusing me by calling me randi and dragging my brother and friend into it as well calling them all loose characters..He told me my own mother thinks i am mad and that she too says I need to see a psychologist.. At that point in anger I too abused him by calling him a bastard. That's when he stuck me again. I had a phone in my hand and after 2 or 3 slaps I struck him with it on his head. That's when he let me go after spitting on me.. I was so upset after this episode that I looked through his cupboard for anything that I could find to use against him and that's when I came across Viagra pills (enclosed pic) growth hormone injections.

When I enquired about the injections (not the pills as I didn't wanna hurt his male ego) he told me they were nutritional supplements and like a naive fool in these matters I believed him. I even messaged his mother at that time telling her that yet again Mayank had raised his hand on me and that he was taking some injections. Her reply always would be "beta have patience. He tells me something and you tell me the complete opposite". "raja all will be ok with time". She never once questioned him about the beatings or the drugs he was using for his body.

Mayank told me his friend Yudhvir in fact the next day was making fun of my behaviour the previous day. When I confronted Yudhvir he denied ever speaking to him after that night (conversation snap shot included along with conversation I had with him and his mother later) so as a few days passed again the anger mellowed down and we started continuing with our life. During the periods that we were fighting obviously there was no sex. And even after that we may have been having sex maybe twice a month.

On the 23rd of April, I left for Chandigarh and my back too was giving me a lot of problem so I called in sick to get my back treated as well to be with my mother during her knee surgery. I was with her during the operation as well as recovery for about 10 days. Even during that period our fights were continuing over the phone.

I got back to Delhi on the 5th of May and our servant ran away with stolen cash on the 6th. Without a servant and having a dog and a job which required me to get away for days on and put a lot of pressure on me. Anyhow some how contacted these and after a few days got a new servant.

Mayank had always been very fond of cars. When he was in Bombay he owned a Mercedes and a Honda civic. When he moved to Delhi he immediately went and bought an Audi A6 so now that his new company was paying him well he decided to sell his A6 and buy a brand new Mercedes Benz E350 which was just launched in the Indian Market. On 31st of May we took its delivery and got it home to SDA where we were still residing at the moment.

Finally end of July 2017 we moved to N116, Panchsheel Park where till date me and Mayank are residing.

I packed and moved the whole house myself without any help from Mayank as his excuse was that I'm working or I'm gyming or I'm tired after coming back from both. During this entire period of moving we obviously kept fighting as I too was stressed managing my work then the household work, then the packing and the shifting.

Mayank's father's birthday falls on 29th July. We had been planning a trip to Portugal so we decided his father's birthday for which a big party was thrown at their residence N39, Panchsheel Park and then leave that very night which we did.

Mayank's sister and brother in law (Disha and Tanuj) who live in Singapore too had flown down for this occasion. Disha and my relations from the very first day we met have been strained and bad. For some reason she dislikes me from day one and for some unknown reason to me she and Mayank (illegible) That evening before the party was to start Mayank and Disha got into an argument where he even struck Disha. His brother in law(illegible) and even hit him. The mother came in between and was hit while the altercation was going on and fell badly to the ground. In his fight Mayank hurt his right elbow very badly.

We reached Faro on the afternoon on 30th of July, Mayank was in immense pain because of the violence that had taken place the previous evening and understandably wanted to rest plus also because of the tiring journey we had endured. In the evening we went to marina bay where again Mayank started arguing with me over the smallest of things.

He would start an argument with me for the smallest of reasons like why are you talking to the cab driver so much or why are you giving such a (illegible) opinion or why are you asking this person so many ques etc. I was just never allowed to have an opinion or just basically talk.

In this 7 day trip we had sex once that too on the last day of our trip.

I thought once we got back from this trip our life would be better together but the bickering never stopped. Whenever he would get back home in the evening after his work and gym he would just not want to talk. The only time we would converse is when he wanted to talk or discuss something. All this was driving me into depression because having been such an independent and emancipated girl I was being reduced to not having a voice at all.

Mayank's bday is on 10 Oct but that year as it was falling in between the week we decided to have his party on the 13th. His friend from Dubai Nita Odedra (who is well aware of Mayank raising his hand on me in Dubai during our honeymoon) flew down specially from Dubai to attend his party. During the entire 3 day of her stay here I caught her and Mayank hugging and cozying up a couple of times. The party went well as so I thought. The next day one of Mayank's friends started calling us up frantically claiming that he had lost close to 20k at our party. Mayank gave him a story (which I was unaware at the time) that he had checked his CCTV cameras (which don't exist) and nothing was found. Only when his friend Sodhi finally re.... (illegible) out to me regarding this matter I confronted Mayank as to why had he lied about the CCTV cameras as there were none installed. Mayank again gave some excuse and the matter was not carried further as I didn't want unpleasantness in my house or between us over this matter. That's the first time it occurred to me though that Mayank is a compulsive liar.

2017 31st Dec Mayank came to Chandigarh where I was spending New Year with my parents. Again 31st night Mayank started arguing with me and my parents over politics (one of his favourite topics) and we fought. The problem with Mayank and his parents is that they think they know all of political matters and everyone around them are fools. Mayank has several posts on his Facebook bashing BJP and everyone else who are in favour of them. A lot of ppl have unfriended

him because of his aggressive behavior specially towards politics and where he is always thrusting his opinion on others.

March 27th 2018 we again had a massive fight where I caught Mayank again taking steroids (video available of his behaviour). I was breaking more and more each day due to this torture that I was enduring day in and day out being with a violent impotent man. Our relationship was more strained than ever.

30th may we fought again bcoz I walked out from a friends gathering as he was insulting me in front of them. I caught a cab and came back on my own as I didn't wanna share the same car as Mayank that night in fear of him insulting and fighting with me more in front of our driver. But he was home before me as the cab I had hired took the wrong turn resulting me reaching home 10 mins later than Mayank. The minute I was home the verbal bashing started "bataa kiske saath thi". "Teri aur teri family ki aukaat kya hai" "chal nikal mere ghar se", "Padhi reheti hai yahaan besharmoo ki tarah", "champagne piye gi", "aukaat hai champagne peene ki" and on and on it went. It was like he was a mad man without any kind of control over himself. He got physically abusive with me again and I have the pics with marks all over my arms to prove it. That night at 1 am I packed my bags and checked into Hyatt regency for 2 nights.

The 3rd day I came back home in the afternoon as I had my flight at night.

On (illegible) June we had our worst fight ever where this time he didn't just hit me but my mother as well. Again he name called us using same words like a.....d (illegible) and telling my mother this time "Padhi reheti hai yahaan pe". His parents were vacationing in London at the time when this happened. Mayank immediately called them back to Delhi and as always as they had been protecting him they were here on

the very next flight. When they arrived instead of apologizing to me and my mother for their son's behaviour and for him lifting his hand on us they told me and my mother to pack our bags and leave the house.

(A lot of recordings are with me of their violent and aggressive behaviour during this period)

Mayank led my mother to believe that I am delusional taking advantage of her simplicity and trust in him. He told my mother that I am mental and that she should take me away for treatment. That's what his mother and father have been saying. He insinuated to my mother that I am having affairs (I am absolutely clean here).

I lost my love and respect for him the day he publicly thrashed me on our honeymoon. That violence has continued till date. He has systematically tried to destroy my self worth by humiliating and demeaning me and my family and friends. Calling me whore, prostitute, randi these words have a very damaging effect on a women's psyche. He has led me to depression and now he and his parents are calling me mad."

19. Considerations at the time of grant of bail as re-stated by the Supreme Court in Anil Kumar Yadav Vs. State (NCT of Delhi) & Anr. (2018) 12 SCC 129 are:

"18. While considering the basic requirements for grant of bail, in State of U.P. v. Amarmani Tripathi, this Court has held as under: (SCC p. 31, para 18)

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour,

means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. State (NCT of Delhi)* [*Prahlad Singh Bhati v. State (NCT of Delhi)*, and *Gurcharan Singh v. State (NCT of Delhi)*]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* : (SCC pp. 535-36, para 11)

‘11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) *Prima facie* satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas*)’”

(emphasis in original)

19. *The test to be applied for grant of bail was also considered in Jayendra Saraswathi Swamigal v. State of T.N. , wherein it was held as under: (SCC pp. 21-22, para 16)*

“16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh and Gurcharan Singh v. State (NCT of Delhi) and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.”

20. Applying the tests as laid down by the Supreme Court repeatedly and without entering into the reliability of the evidence for the reason at this stage this Court cannot come to conclusion that the email of the deceased addressed to Dr. Aman Hingorani was exaggerated and an after-thought, or on legal advice, it is evident that there are at least five instances where the petitioner has inflicted physical cruelty to the deceased i.e. firstly at Dubai when they went for their honeymoon thereafter on 13th July, 2016, 12th April, 2017, 30th May, 2017 and 6th June, 2018 when it is alleged that not only did the petitioner assault the deceased but also her mother. Though the case of the petitioner is that the said physical assault whenever was on a provocation by the deceased, which on one occasion the deceased had also admitted, however the provocation if any does not give a leeway to the petitioner/ the husband to inflict physical cruelty on the wife.

21. In the email to Dr. Aman Hingorani as regards demand of money case of Anissia was that every time when the hotel payments were to be made

credit card of Mayank did not work, however she was quick to add that though it was her credit card used but Mayank finally paid her the money.

22. Besides physical cruelty the email of the deceased addressed to Dr. Aman Hingorani also show mental harassment. The petitioner has been repeatedly using words like “*Randi*”, “*Beshram Aurat*”, “*disgusting*”, “*Bata kiske saath thee*”, “*teri or teri family ki aukat kya hai*”, *padi rehti hai yahan beshram ki terah*”, “*aukat hai champagne peene ki*”, etc.

23. Case of the petitioner having gone through his whatsapp messages is that the deceased was suffering from depression and undergoing treatment from a Doctor at Chandigarh which was causing temperamental differences and her behavior was provocative. Despite every effort made by the petitioner to reconcile and ensure peace and harmony, the situation would be created in a manner resulting in escalation of differences. The petitioner has also canvassed that when the deceased committed suicide, her alcohol level as per the viscera report was very high i.e. ethyl alcohol 298.00 Mg/ 100 ML of blood and the range of 200-300 results in amnesia – black out. Learned counsel for the petitioner also contended that despite Anissia/ the deceased having messaged to her friend Seema Malik and her lawyer Dr. Aman Hingorani that she was going to commit suicide, no one came to her help which shows that it was her routine behavior and people did not take it seriously. Even the eye-witness Naveen Kumar, the labourer working thought that she was taking a selfie and after 2-3 minutes he found her hanging on the outer side of the railing and thereafter she left the railing. Even from the documents of the prosecution it is evident that both the parents were mediating to sort out the temperamental differences and though the parties had started living separately from 6th June, 2018 on the insistence

of the deceased and the asking of the petitioner's uncle to give one more try to the marriage both petitioner and Anissia started living together in the same house but in different rooms.

24. Countering the arguments of learned standing Counsel that Neelam Batra wrote a message to Sushila Singhvi indicating how the petitioner had fooled her and her husband to believe that their daughter was suffering from mental depression, it is stated by learned counsel for the petitioner that after legal advice was taken and after the petitioner informed Mrs. Neelam Batra that he had saved all the messages that the complainant sent the message to his mother that she and her husband were made to believe that their daughter was suffering from depression.

25. No doubt there are a number of conversations between the petitioner and the complainant wherein the complainant admitted her daughter's medical condition, but whether the complainant and her husband were induced to believe the same by the petitioner or that the message of the complainant to the petitioner's mother was an after-thought and to cover up her earlier messages is an issue required to be determined during the course of trial. Further to what extent there was provocation by the deceased or that the deceased committed suicide due to overdrinking and not because of the conduct of the petitioner will also be required to be determined during the course of trial. At this stage this Court is required to apply the 'prima facie' test only.

26. Applying the test for grant of bail as laid down by the Supreme Court, it may be noted that in the present case even if there is no apprehension that the petitioner would flee from justice and be not available for trial, the accusations of physical and mental cruelty being serious in nature, there

being prima facie material to show physical and mental cruelty, and a few public witnesses required to be examined, this Court finds no ground to grant bail to the petitioner at this stage.

27. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 01, 2019
‘rk’

