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

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+ **CRL.M.C. 2521/2015 & CRL.M.A. No. 8768/2015 (for stay)**

Ms. X

..... Petitioner

Through: Mr. Sidharth Luthra and Mr. Kirti Uppal, Senior Advocates with Mr. Ashok Nijhawan, Mr. Arun Batta, Mr. Arun Trehan, Mr. Shivek Trehan and Mr. Pratik Batta, Advocates.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Navin Sharma, APP for State with Inspector Ved Prakash, SHO PS Nizamuddin.
Mr. Aditya Wadhwa, Advocate for Respondent No.2.

CORAM: JUSTICE S. MURALIDHAR

ORDER
11.06.2015

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1. This is a petition seeking cancellation of the bail granted to the accused (Respondent No.2) in FIR No. 374/2015 registered at Police Station Hazrat Nizamuddin under Sections 452/308/354/323 IPC by the learned Additional Sessions Judge (‘ASJ’), Saket, District West by an order dated 5th June 2015.

2. The Petitioner is the Complainant who happens to be a practising lawyer residing in a house in Jangpura Extension for the past two years. On her complaint, an FIR was registered on 28th May 2015 wherein she stated that on 27th May 2015 at around 8.30 to 9 pm while she was listening to music on earphones and surfing internet on her mobile while lying on bed, “one identified boy entered my premises” and hit her on the head several times with a rod, which he was carrying. She became unconscious briefly. When she regained consciousness, she could “hear sound of hitting” and even her phone battery had been damaged. The accused had torn her shirt. As he was coming closer to her, she shouted for help. After the landlord residing on the third floor came out and shouted, the accused fled from the spot. The Petitioner stated in her complaint that “I can identify the person if I see him”.

3. As it transpired, the Respondent No.2/accused was arrested by the police at around 9 pm on 28th May 2015. It is now seen that the accused resides in Church Road which is different from Church Lane where the building in which the Petitioner resides/is located. This is

significant because in his application for regular bail before the learned ASJ Respondent No. 2 inter alia stated in para 3 that he is the “owner of the aforesaid house” at Church Lane. Mr. Aditya Wadhwa, learned counsel for Respondent No.2 candidly stated that the aforesaid statement was admittedly erroneous, as the house where the Petitioner resides is owned by his aunt and Respondent No.2 claims to frequently visit his aunt. In other words, the aunt of the accused is the landlady of the Petitioner.

4. The serious issue that arises is that impugned order of the learned ASJ erroneously records that “as per the medical report no head injury was found present on the body of the victim.” The Court has been shown the MLC of the Petitioner, prepared at AIIMS, which notes the following four injuries on her person on 28th May 2015:

- (i) fresh sutured wound left parietal region
- (ii) abrasion left forearm.
- (iii) bruise right shoulder, right popliteal fossa and lower thigh
- (iv) swelling over left eyebrow.

5. Further the Court is informed by the learned APP that the records of Jeevan Hospital where the Petitioner first underwent treatment have been collected. It shows that she received as many as ten stitches on her scalp. The photographs placed on record in the present petition also bear out this submission.

6. Clearly, therefore, the learned ASJ was totally in error in observing that “as per the medical report no head injury was found present on the body of the victim.”

7. The Petitioner wrote to the SHO on 29th May 2015 pointing out that a case was made out for addition of Section 376 read with Sections 511, 354-B, 325 and 326 IPC. The learned APP informs the Court that although initially FIR was registered under Sections 452/308/354/323 IPC subsequently Section 354-B IPC, which is a serious offence, has been added. He states that a decision will be soon taken on adding further sections of the IPC.

8. Mr. Wadhwa pleaded that the manner of identification of the accused by the Complainant was unknown to law since some photographs of suspects were sent to her by the police on 'Whatsapp' and she identified the accused from those photographs.

9. The Court notes that in her complaint, the Petitioner stated that "one identified person" had attacked her. Further, she volunteered to identify the person if she saw him. In the circumstances, the Court does not *prima facie* find any irregularity in the police having adopted the aforementioned method for getting the Complainant to identify the assailant. She was at the relevant time obviously in a traumatised, injured condition and this was perhaps the most efficacious way of zeroing in on the culprit. Nevertheless, these are only *prima facie* observations and without prejudice to the defences of the accused and what may ultimately emerge at a subsequent stage in the proceedings.

10. In the circumstances, the Court is of the considered view that the learned ASJ was plainly in error in proceeding to enlarge Respondent No.2 on regular bail within one day of arrest in the matter. Plainly, the

FIR calls for further detailed investigation and the custody of the Respondent No.2/accused will certainly be required for that purpose.

11. In that view of the matter, the order passed by the learned ASJ on 5th June 2015 is hereby set aside and the bail granted to Respondent No.2 is cancelled. Respondent No.2 will now surrender before the Investigating Officer by 5 pm today.

12. The Court is of the view that in order to protect her privacy the name of the victim Complainant shall be kept anonymous in the proceedings throughout.

13. A copy of this order be given *dasti* to learned counsel for the parties as well as the IO under the signature of Court Master.

S. MURALIDHAR
(Vacation Judge)

JUNE 11, 2015/dn