

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

Delivered on: 22nd September, 2015

+ **BAIL APPLN. 1952/2015 & Crl.M.(Bail).No.7749/2015**

SOMNATH BHARTI

..... Petitioner

Represented by: Mr. Dayan Krishnan, Sr. Adv. with Mr. Vijay Aggarwal, Mr. Mudit Jain, Mr. Samprikta Ghosal, Mr. Arjun Taneja, Ms. Chaitali Jain, Mr. Ashul Agarwal, Mr. Pulkit Kamboj, Ms. Barkha Rastogi, Ms. Aakashi Lodha and Mr. Dhruv Pal, Advs.

Versus

STATE

..... Respondent

Represented by: Mr. Shailender Babbar, Adv for the State with Inspector Dhiraj Kumar and Inspector Shashi Bala in person.

Mr. Rahul Kumar, Adv for complainant with complainant in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, the petitioner seeks directions thereby directing the IO/SHO concerned that in the event of arrest of the petitioner, he will be released on bail in FIR No.0745/2015 registered at PS Dwarka North (South-West District) under Sections 307/313/324/498-A/406/417/420/506/511/34 of the Indian Penal Code, 1860 (hereinafter to be referred as 'IPC').

2. Mr. Dayan Krishnan, Id. Sr. Counsel appearing on behalf of the petitioner submitted that petitioner got married with the complainant on 08.12.2010 after an intensive courtship period of 9 months. The couple being of same age, i.e., 35 years after knowing each other and spending good time together decided to marry. From 13.12.2010 to 23.12.2010, the couple went on honeymoon to Sri Lanka and Maldives. Between 23.12.2010 and 23.02.2011, complainant used to spend day time on the week days in her office at Chattarpur and weekends with her mother at Dwarka. She worked with one Mr. Siddharth Shankar as his executive assistant at his office at Chattarpur. On 23.02.2011, the complainant desired to go her parental house for few days, which the petitioner consented. The complainant was pregnant at that point of time and on 27.04.2011 a girl child was born out of the said wedlock. The petitioner used to visit his in-laws residence at Dwarka to meet and provide every possible assistance to his wife / complainant and his new born baby.

3. However, on 18.07.2011, to the utter shock and surprise, the complainant had sent an e-mail for breaking down all relationship with the petitioner. Thereafter on 17.10.2011, she filed a complaint against the petitioner at CAW Cell, Sector-9, Dwarka, New Delhi, whereby the complainant accusing the petitioner of domestic violence and torture among other allegations. The said complaint was counter-blast to pressurize the petitioner to withdraw the complaint filed by him against his wife's servant for theft of US\$ 4,300/-.

4. Ld. Sr. Counsel further submitted that in the month of November, 2011, mediation sessions were conducted between the petitioner and his wife before CAW Cell mentioned above. The petitioner fully cooperated for making the counselling sessions successful. Minor differences were addressed and complaint against the complainant's servants was withdrawn and relationship resumed. The petitioner continues to be of the belief that in cases of late marriages, minimum of a year of togetherness can bring the long-lasting understanding to withstand and pass through the challenges of life. On 27.05.2013, a baby boy was also born out of the wedlock.

5. On 25.02.2015, complainant visited the petitioner in AIIMS after a gap of 7 months on coming to know of his illness and things again resumed in full stream. However, on 10.06.2015, to the utter shock and surprise, the complainant had approached the Delhi Commission for Women (DCW) on false pretext of domestic violence and alleging that the petitioner has been abusing her ever since her marriage in 2010. It is further alleged that petitioner had unleashed his dogs on her when she was pregnant and subjected her to severe mental and physical torture.

6. Ld. Sr. Counsel submitted that on 11.06.2015, the petitioner learnt that complainant approached CAW Cell, Sector-9, Dwarka, and summons were issued to him for 17.06.2015. As he was in Kerala until 19.06.2015 on tour of Southern States for party expansion work, on his telephonic request through counsel the matter was advanced to

26.06.2015. The petitioner and his wife/complainant had good two hours long counselling session at ACP Office in the presence of Sh. Rajesh Dev, Addl. DCP, Sh.H.M. Bakshi, ACP and Smt.Shashi, Investigating Officer of the case and the talks were turned to be icebreaker. Again on 25.06.2015, second session in the same office was held for over two hours long which turned to be a better one. However, the police registered FIR No.0745/2015 dated 09.09.2015.

7. Ld. Sr. Counsel submitted that subsequent to the registration of the FIR, the petitioner moved an application seeking anticipatory bail before the Sessions Court at Dwarka, which was dismissed vide order dated 14.09.2015. Thereafter, the petitioner filed the present petition on 15.09.2015. Thus, the petitioner never absconded from the legal process but availed the legal rights available to him under the law.

8. Ld. Sr. Counsel further submitted that in the present case, even from the day allegations made, no ingredients of Section 307 IPC have been met and no intention of the petitioner to have committed an offence under Section 307 IPC is made out from the complaint.

9. Further submitted that as per the complainant, she herself got an abortion done, which is enough to prove that offence under Section 313 IPC is not made out against the petitioner.

10. The present case is matrimonial one. In case of ***Arnesh Kumar v. State of Bihar 2014 8 SCC 273***, the Hon'ble Supreme Court of India has issued directions to all the State Governments to instruct its police officers not to automatically arrest when a case under Section 498A

IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down in Section 41 Cr.P.C. The petitioner has been entrusted with the constitutional duty by virtue of being a member of Legislative Assembly, Malviya Nagar, New Delhi, and he is bound to discharge the functions of Delhi Assembly. He is also a member of DDA and Chairman of Privilege Committee, Delhi Legislative Assembly. Hence, there are no chances of his fleeing from law. But, it would a travesty of justice, if the petitioner is forced to undergo ignominy of arrest.

11. This Court in case of ***Court on its own Motion v. CBI, 2004 (1) JCC 308 (DL)*** has held that the arrest should also be avoided if investigation can be completed even otherwise and if the accused has given full cooperation in completing the investigation. The petitioner has joined the enquiry on 3 occasions, which include two sessions, first on 22.06.2015 and second on 25.06.2015 as noted above.

12. Ld. Sr. Counsel submitted that all possible steps to reunite the family should have been made as the couple have two minor children, i.e., four years daughter and two years old son, before recommending registration of FIR under Sections 498-A/406 IPC in the cases where only in the heat of moment over trifling fight and ego clashes dispute arose between the parties. These provisions to a large extent have done incalculable harm in breaking matrimony of the couples as held by the Hon'ble Supreme Court in the case of ***Chander Bhan and Anr. V. State 2008 (151) DLT 691***.

13. Further submitted that it is settled principle of law that the offence under Section 498A IPC is not a continuing offence as the complainant had already filed a complaint against the petitioner on 17.10.2011 before the CAW Cell at Sector-9, Dwarka, New Delhi, for the offences of domestic violence, however on the same allegations, the present FIR has been registered against the petitioner, which is impermissible under law as held in the case of ***Y. Abraham Ajith v. Inspector of Police Chennai 2004 CrL. L.J. 4180.***

14. The offence under Section 406 IPC is not a continuing offence, as the moment the entrustment is made and the person to whom the property has been entrusted, convert to his / her own use, the offence under Section 406 is complete. However, in this case, complainant left her matrimonial house on 23.02.2011 and since then she has been living in Dwarka. It is also pertinent to mention here that the earlier complaint against the petitioner for the offence under Section 406 IPC makes no mention that any jewellery left entrusted with the petitioner. Moreover, on the same facts, the complainant has filed the present complaint again which is impermissible under law as held in the case of ***Dinabandhu Banerjee v. Nandini Mukherjee 1994 CrL. L.J. 44.***

15. Ld. Sr. Counsel further submitted that the provisions of Section 468 Cr.P.C. prohibits to take cognizance of offence under Section 406/498A IPC, after the expiry of period of limitation, as the complainant allegedly entrusted jewellery with the petitioner's mother through the petitioner before 23.02.2011 and for such offence, 3 years

is prescribed period to take cognizance in the matter by the criminal court of law. The supplementary statement cannot be considered for rejecting the bail application as the same are not trustworthy in nature as held in case of ***Majhar @ Papu and Ors. V. State 96 2002 DLT 566*** and ***Rajesh Kr. Singhal v. State 2001 (III) AD (Cr.) DHC 115***.

16. Ld. Sr. Counsel further submitted that in Para 9 of the status report filed by the State, it is stated that the facts of the present case requires custodial interrogation of petitioner for recovery of dowry articles etc. Whereas complainant admittedly conceived in the month of January, 2014, which establishes that everything was going well between the petitioner and the complainant. Thereafter, she made a complaint on 11.06.2015, in which there is no reference of kitchen knife. However, in Para 7 of the status report it is specifically stated that the petitioner slit the left hand wrist of the complainant by kitchen knife and tried to kill her in front of their children. This fact has not been stated by the complainant / wife even in her statement recorded under Section 164 Cr.P.C. on 10.09.2015. Even there was no allegation of blackmailing against the petitioner and no such issue rose during counselling. Moreover, the alleged incident of 2013 was reconciled.

17. It is alleged in the FIR that on the night of 27.05.2015 and early morning of 28.05.2015, petitioner again abused the complainant verbally and physically at her home in Dwarka in front of their children, whereas in Para 7 of the status report it is mentioned that in

the night of 27.05.2014 and early morning of 28.05.2014, petitioner gave brutal beatings to the complainant and thereafter, he slit her left hand wrist by a kitchen knife and tried to kill her. Even at this stage, no such issue of blackmailing has been raised.

18. Ld. Sr. Counsel further submitted that as far as the jewellery articles are concerned, she has submitted a list of 5 jewellery articles. As admitted, during the hearing of this case before this Court, total weight of the gold jewellery is 210 Gram. If it is valued in the present rate, the total value would be around Rs.4,00,000/-. However, the petitioner is ready to pay an amount of Rs.4,50,000/- for the same without prejudice to his rights and contentions.

19. On the other hand, Mr.Shailendra Babbar, learned counsel appearing on behalf of the State submitted that the petitioner used to harass and treat the complainant with cruelty, both physically and mentally and had demanded verbally more dowry articles. He demanded a car and a house from the complainant and when it was refused, he used to beat her. On 23.02.2011, she was beaten by the petitioner upon instigation of his mother and thereafter compelled to leave matrimonial house at about 11.00 PM.

20. Further allegations against the petitioner are that at the time of delivery of first child, the petitioner-used to harass and torture her by repeatedly abusing at her work place knowing fully well that health condition of the complainant was not well as she was diabetic and hypertensive. During the entire term of pregnancy, the petitioner and

his mother tried their level best to harm the complainant and the unborn child. In these circumstances, the first child was delivered pre-matured on 27.04.2011. The behaviour of the petitioner towards the complainant was very rude and under influence of alcohol, in the presence of public, he used to abuse the complainant. Accordingly, she filed a complaint in the month of October, 2011 before CAW Cell, within the first year of her marriage. The allegations in the aforesaid complaint were that she was beaten brutally by the petitioner when she was in the fifth month of pregnancy.

21. Learned counsel for the State further submitted that when the complainant was in her advance stage of pregnancy, i.e., seventh month, the petitioner knowing fully well that health of the complainant was not good and she was losing weight because of pregnancy, the petitioner got instigated in the night of 19.03.2011 when a demand was made by the complainant for payment of rent which was due on 20.03.2011. The accused, despite having knowledge that even small physical abuse may lead to threat of life not only to the complainant but also to the unborn child, however, slapped the complainant several time. Thereafter, he held the complainant from her neck and strangulated her. He pushed her on the floor and even seeing the complainant fighting for breath, the petitioner directed his dog to attack her specially when one and a half year old daughter was standing beside her and watching the aforesaid episode and howling. The attack by the dog upon the complainant caused her serious bites upon the

protruding stomach and private parts and the petitioner kept on watching the same from a distance.

22. The complainant further narrated a nightmare that in the night of 27.05.2015 and early morning of 28.05.2015, the petitioner gave brutal beatings to her and thereafter he slit her left hand wrist by the kitchen knife and tried to kill the complainant in front of the children. She fell unconscious and was left unattended to die. Since the petitioner had knowledge that his acts may lead to death of the complainant and therefore, committed an offence punishable under Section 307 IPC.

23. Furthermore, it was very much in the knowledge of the petitioner that strangulating and slapping the complainant and making a dog attack may also lead to miscarriage, thus, the petitioner has committed an offence punishable under Section 313 IPC read with Section 511 IPC. In this regard, medical record regarding foetus movement was done and the graph did not show movement of the child and at one point of time, the Doctor had even suggested that the child may not survive.

24. During arguments, learned counsel for the State has produced a copy of an email dated 20.03.2013 sent by the complainant to the petitioner, whereby stated as under:-

“I could not manage to check the injuries inflicted on me yesterday by you & your dog because I was in too much of pain. However, today morning I have noticed that I have been bitten 6 times by your abnormal & violent Dog besides numerous other wounds/injuries on my neck, arms & right leg inflicted by you.

Your dog has bitten me at 3 places on my abdomen, at 1 place on my lower abdomen, there is a big wound at my Vagina (yes!!!), since now these days I cannot see my vagina because of my 7 month old pregnancy, today I discovered the wound by seeing myself in the mirror & I was wondering since yesterday why so many of my pubic hair has been falling on its own. And off course there is wound on my thigh which is very painful.

If you want proof of the same, I will photograph myself today & can forward you the relevant pictures.

I don't think even a rouge will treat a 7 month pregnant woman the way you have treated me.

I don't see any reason for us to be together anymore! Therefore, I would request you to please move out from my home alongwith your dog at the earliest."

25. As regards the legal import of the meaning of 'miscarriage' occurred in Sections 312 and 313 IPC, learned counsel for the State has relied upon the case of **Dr. A. Ebenezer Vs. Smt. M. Mary, ILR 2002 KAR 2606**, decided by the Karnataka High Court on 18.04.2002, whereby observed as under:-

"22. Apart from above, as regards the legal import of the meaning of "miscarriage" occurring in Sections 312 and 313 of the IPC, Mr. B.R. Nanjundaiah invited the Court's attention to a relevant passage from Modi's Medical Jurisprudence quoted with approval by a Division Bench of this Court at paragraph 6 of its judgment In re Malayara Seethu AIR 1955 Mys. 27. The same is reproduced below:

"(6). . .

In Modi's Medical Jurisprudence at page 325 it is stated:

"Legally, miscarriage means the premature expulsion of the product of conception, an ovum or a foetus, from the uterus, at any period before the full term is reached. Medically, three distinct terms, viz., abortion, miscarriage and premature labour, are used to denote the expulsion of a foetus at different stages of gestation. Thus, the term, abortion, is used only when an ovum is expelled within the first three months of pregnancy, before the placenta is formed. Miscarriage is used when a foetus is expelled from the fourth to the seventh month of gestation, before it is viable, while premature labour is the delivery of a viable child possibly capable of being reared, before it has become fully mature".".

Then, this Hon'ble Court, advertng to the fact of that case, further proceeded to observe:

"(6). . . .

At page 303 it is stated that children born at or after 210 days or 7 calendar months of uterine life are viable, i.e., are born alive and are capable of being reared. The child in this case was beyond 7 months, so that medically this is a case of premature labour and not of miscarriage...".

26. Learned counsel for the State further submitted that as alleged by the complainant that there are various electronic recordings available with the petitioner on the strength of the same, the petitioner had been blackmailing the complainant as such custodial interrogation is required in this case to recover the same. He further submitted that the petitioner is a habitual offender and he is involved in two more cases both registered at Police Station Malviya Nagar, Delhi. One bearing FIR No.76 dated 19.01.2014 for the offences punishable under Sections 153A/323/354/509/506/452/427/147/149 IPC and another FIR No.1266 dated 26.09.2014 under Sections 323/341/153A IPC. This

clearly shows that the petitioner is not only violent and outrageous at home but also similarly violent and outrageous before the general public at large.

27. The complainant made a complaint against the petitioner on 11.06.2015 and notice was issued accordingly for 19.06.2015, but he did not appear. However, he appeared on 21.06.2015 and 26.06.2015. He attended three or four conciliation proceedings, but that was not part of the investigation. On 16.07.2015, last mediation was proceeded and two months time was granted to the parties to reconcile the matter but they failed to do so. Accordingly, on 09.09.2015, after giving sufficient time to the parties, FIR in question was lodged and thereafter, notice under Section 160 Cr.P.C. was issued to the petitioner to join investigation, however, he did not join the same.

28. Learned counsel for the State apprehended that if the petitioner is not taken into custody, no witness will come forward to depose against him.

29. While concluding his submissions, learned counsel submitted that the allegations of cruelty and of attempt to kill the complainant are serious, which can be proved if the public witness come forward against the petitioner to support the case of the complainant. Not only he abused and slept the complainant, he slit her left hand wrist with kitchen knife and left her unattended to die. Therefore, recovery of the said knife can be effected only if he is taken into custody. Moreover, the jewellery lying with the petitioner and his mother have to be

recovered and the electronic recordings through which he has been blackmailing the complainant is to be recovered from the petitioner. The petitioner not only tried to intimidate the complainant but has also tried to pressurize the officers involved in the investigation of this case by making numerous calls, recording the same and displaying the same before Media. Moreover, the petitioner persons walked into the Police Station at 2.00 AM past midnight and threatened the officers present there to record his presence. He misused the indulgence granted by this Court.

30. Learned counsel submitted that in the facts and circumstances narrated above, the custodial interrogation of the petitioner is required. Thus, the petition deserves to be dismissed.

31. I have heard in length the learned counsel for the parties.

32. The aforesaid case was registered on the complaint of Smt.Lipika Mitra, wife of petitioner, made on 11.06.2015 to the Deputy Commissioner of Police, District South-West, New Delhi, whereby stated in the complaint that the petitioner and the complainant got engaged on 10.10.2010 and married on 08.12.2010 in Court and later on in Temple. The entire cost of the engagement function, marriage and reception on 12.12.2010 was borne by her. From 13.12.2010 to 01.12.2010, honeymoon was also organized by her. Even during honeymoon, the petitioner misbehaved with her several times.

33. It is further alleged that after returning from honeymoon, the

petitioner told her to hand over the entire jewellery and gifts to her mother-in-law Smt.Manorama Rani Bharti. Accordingly, she did and never demanded back those jewellery and gifts and the same are still lying with the mother of the petitioner. Despite being pregnant and not being well (diabetic and hypertensive) she was subjected to regular verbal, mental & physical abuse by her mother-in-law and the petitioner as well. The petitioner demanded a car and a house. When she used to express her inability, her mother-in-law and the petitioner used to abuse and slap her.

34. It is further alleged that on 23.02.2011, she was beaten by the petitioner in front and on instigation of his mother. Accordingly, the complainant decided not to tolerate their abuse anymore and she left the matrimonial house. On 27.04.2011 she gave birth to a premature baby girl by C-section delivery who was kept in the incubator for 9 days with many medical problems. No financial contribution was made by the petitioner from 07.05.2011 onwards towards the upkeep of the child and other needs. He used to visit her and child and spent a night with them on weekends. The petitioner many times became furious and used filthy language by calling her prostitute and also asked her to go and slip with their neighbours. On seeing his behaviour, she decided to end her relationship with the petitioner and communicated the same to him through an e-mail dated 18.07.2011. In response to the aforesaid e-mail, the petitioner approached her and apologized for all his deeds in the past and promised her that he will not repeat any such action in future and extend fatherly affection to the

child. Thereafter, he made to shift her in matrimonial house, accordingly, she sent her driver Dharmendra and one domestic help to arrange a portion of her matrimonial house liveable as per the needs of the child. However, on reaching there she was surprised to find that her mother-in-law and brother-in-law were abusing the domestic help. They even refused to open the door for her. The petitioner also abused her under influence of liquor in the presence of public. This prompted her to call up 100 No. and she succeeded to rescue the domestic help after three hours with the help of police. Petitioner threatened her with physical violence in front of the public and police personnel accumulated there. Rather the petitioner filed a false complaint against the driver Dharmendra and domestic help at Police Station Vasant Kunj implicating them for stealing US\$ 4300 which was later on proved to be fake.

35. Thereafter, she filed a complaint dated 17.10.2011 at CAW Cell, Dwarka, however, the petitioner assured her to make things viable. Accordingly, she did not press said complaint.

36. In September, 2012, she again conceived from their marriage. Thereafter, petitioner shifted along with her and their daughter in a rented apartment at Dwarka but miserably failed to make payment of security and rent towards the flat. Same was ultimately paid by her. On 19.03.2013, since the rent gets due on 20th of every month, she requested the petitioner to pay for the same on 19th night, upon which he abused her verbally. He slapped her several times and also tried to

strangulate her. After that he pushed her knowing very well that she was in the 7th month of her pregnancy. He then made his dog (a big Labrador) attacked her. She was bitten by the dog at multiple places on her stomach and private parts. On hearing her cry, the neighbours came to intervene and only then petitioner controlled his dog.

37. She delivered a baby boy on 27.05.2013 night. Thereafter, when she took her 8 days old son to the hospital for check up, she was alone with the infant and also unwell as she had a C-section operation just 7 days back. She made a call to petitioner from hospital for help, however, after multiple calls, he agreed to come to the hospital. But, after coming to the hospital he ran away from there like a criminal trying to hide as the doctors could recognise him for not paying their earlier dues of 2011. He left her alone to deal with the situation and showed no concern. She got the child admitted for treatment and all expenses were borne by her.

38. During June, 2013 the petitioner again approached her and asked for her support as he was contesting for the Delhi Assembly elections. She supported him with the view that if he wins the election he might mend himself and might stop his brutality against her.

39. In January 2014, she realised that she has conceived third time. That time petitioner himself advised her to terminate her pregnancy. On 24.01.2014, she went for termination on her own. He did not accompany her due to his alleged busy schedule being Law Minister. Later on she came to know that he was busy attending social functions

and was flying kites at some event.

40. It is further alleged that on the night of 27.05.2015 (early morning of 28.05.2015), he again abused her verbally and physically at her home in Dwarka in front of their children. He called her a prostitute repeatedly and beaten her black and blue.

41. Admittedly, the dispute between the petitioner and complainant is of matrimonial one. On perusal of FIR, which is reproduction of the complaint, it establishes that their most of the differences are because of poor financial condition of the petitioner and remaining are due to temperamental incompatibility. Due to which, the complainant left the matrimonial house first time on 23.02.2011. Thereafter, they continued to meet and the complainant conceived twice. From their wedlock, there are two minor children, i.e., four years old daughter and two years old son. Third pregnancy has been terminated with the instruction of the petitioner. Since February, 2011, there was no financial help from the petitioner as alleged. It is not in dispute that all the time they settled their disputes and stayed together as husband and wife. The allegations of abusing, slapping and misbehaving are not new. Earlier also, complainant made complaint against the petitioner to CAW Cell, Dwarka, which was compromised. It shows that the complainant never wanted to break the marriage. Now, situation is more serious, as the parties having two minor children between them. The complainant has taken stand to break the marriage as she stated in

complaint itself and taken the same stand before this Court during arguments in this petition.

42. In case of *Preeti Gupta and Another Vs. State of Jharkhand and Another*, (2010) 7 SCC 667, the Supreme Court held that the ultimate object of the justice is to find out the truth and punish the guilty and protect the innocent. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful. Therefore, it is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

43. It is pertinent to mention here that the Hon'ble Supreme Court having observed as above, directed its Registry to send a copy of that judgment to the Law Commission and to the Union Law Secretary, Government of India, who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society.

44. Moreover, this Court in case of ***Chander Bhan*** (*supra*), issued guidelines to Social Workers/NGOs, Lawyers and Subordinate Courts and observed that :-

(I) There is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility the hapless children are the worst victims. Before a wife moves to file a complaint with the Women Cell, a lot of persuasion and conciliation is required.

(II) The lawyers were also appealed that while drafting pleadings/complaints, they should not unnecessarily suggest incorporation of wild allegations, or in character assassination of any of the parties or their family members whatever the case may be.

(III) They also endeavour to bring about amicable settlement between the parties as they are expected to discharge sacred duty as social engineers in such cases instead of making them target for monetary considerations by multiplying their cases.

(IV) The Subordinate Courts were directed that while trying civil or criminal cases concerning bail, maintenance, custody, divorce or other related matters shall in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties. The first endeavour should be for possible reunion and restitution of the parties and as a last endeavour to bring about peaceful separation.

45. This Court is conscious about the dictums of the Supreme Court and of this Court in the cases mentioned above. The present case is not a simplicitor one for the offences under Sections 498-A/406 IPC but the complainant has been tolerating cruelty with brutal assault, which is evident from the e-mail dated 20.03.2013 sent by complainant to the petitioner. The same is reproduced as under:-

“I could not manage to check the injuries inflicted on me yesterday by you & your dog because I was in too much of pain. However, today morning I have noticed that I have been bitten 6 times by your abnormal & violent Dog besides numerous other wounds/injuries on my neck, arms & right leg inflicted by you.

Your dog has bitten me at 3 places on my abdomen, at 1 place on my lower abdomen, there is a big wound at my Vagina (yes!!!), since now these days I cannot see my vagina because of my 7 month old pregnancy, today I discovered the wound by seeing myself in the mirror & I was wondering since yesterday why so many of my pubic hair has been falling on its own. And off course there is wound on my thigh which is very painful.

If you want proof of the same, I will photograph myself today & can forward you the relevant pictures.

I don't think even a rouge will treat a 7 month pregnant woman the way you have treated me.

I don't see any reason for us to be together anymore! Therefore, I would request you to please move out from my home alongwith your dog at the earliest."

46. Moreover, during arguments, counsel for the State produced the medical papers of her being bitten by the Dog of the petitioner. The allegations against the petitioner are not baled but supported with documentary proof. The complainant time and again compromised with the petitioner for the sake of their marriage and family. She even co-operated during the election of petitioner. Despite, their marriage is not running smoothly.

47. The petitioner is elected as Member of Legislative Assembly of Delhi. He should have shown more generosity and responsibility towards his wife and children. Earlier, he had financial difficulties, therefore, every time, he compromised with his wife. But after electing MLA, he failed to win the sentiments and trust of his wife.

48. Moreover, after granting protection by this Court vide order dated 15.09.2015, the petitioner reached to the Police Station at 2.00 AM (night) and compelled the police officers to record his presence. The said conduct of the petitioner cannot be appreciated in any manner. Thus, he has misused the protection granted by this Court.

49. In addition to above, the petitioner is involved in two more cases, both registered at Police Station Malviya Nagar. One bearing

FIR No.76/2014 for the offences punishable under Sections 153A/323/354/ 509/506/452/427/147/149 IPC and another FIR No.1266/2014 under Sections 323/341/153A IPC, which speaks of volume and shows that the petitioner is not only violent and outrageous at home but also before the public at large as noted in above mentioned cases.

50. In the present case, the allegations against the petitioner are very serious. The case against the petitioner is under Sections 307/313/324/498-A/406/417/420/506/511/34 IPC.

51. Keeping in view the law discussed above and the peculiar facts and circumstances of the case, this Court does not find any merit in the instant petition.

52. Accordingly, the petition alongwith pending application is hereby dismissed, with no order as to costs.

(SURESH KAIT)
JUDGE

SEPTEMBER 22, 2015

RS/jg/sb