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

+ **CRL.M.C. 5063/2014**

NEHA GUPTA

..... Petitioner

Represented by: Ms.Kavita Agrawal, Adv.

versus

STATE OF GOVT. OF N.C.T. OF DELHI & ANR..... Respondents

Represented by: Mr.Amit Ahlawat, APP for State
Mr.G.P.Thareja and Mr.Satyam Thareja, Advs. for
R-2.

CRL.REV.P. 305/2016

RAKESH MALIK & ORS

..... Petitioners

Represented by: Mr.G.P.Thareja and Mr.Satyam
Thareja, Advs.

versus

STATE & ANR

..... Respondents

Represented by: Mr.Amit Ahlawat, APP for State
Ms.Kavita Agrawal, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

ORDER

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09.09.2016

CRL.M.C. 5063/2014

1. The petitioner is the complainant on whose statement FIR No.361 dated June 09, 2014 PS Anand Vihar for an offence punishable under Section 308/34 IPC has been registered in which Rakesh Malik, respondent No.2 in the instant writ petition has been admitted to bail. The petitioner

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seeks cancellation of the bail granted on June 13, 2014.

2. In the complaint, petitioner states that she resides with her husband on the first floor of House No.166 Surya Niketan, Anand Vihar, Delhi and on the day of the incident i.e. June 09, 2014 the children of her sister-in-law pressed the left switch (location of the switch not disclosed) and at that respondent No.2, his wife and their daughter broke the light of the common staircase. Accompanied by her sister-in-law who was in her house she asked why was the light broken. At that Rakesh Malik using filthy language hit her on the head with a *danda*.

3. The MLC records a superficial injury.

4. In the aforesaid backdrop it cannot be said that the learned Trial Judge has exercised discretion on wrong principles.

5. No case is made out to cancel the bail granted.

6. Crl.M.C. No.5063/2014 is dismissed.

Crl.Rev. P. No.305/2016

1. As regards Crl.Rev.P. No.305/2016 I find that the accused is aggrieved by the order framing charge for the offence punishable under Section 308 IPC.

2. For the reasons noted herein above, while declining to cancel the bail granted to the accused Rakesh Malik, noting that the doctor has opined the injury to be simple : it is an abrasion with tenderness; the injury is a soft tissue injury, notwithstanding the situs being on the parietal region, no charge for the offence punishable under Section 308 IPC can be framed.

3. The *danda* used as per the charge-sheet is 2 feet 6 inches in length having a diameter of 3 cm.

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4. It would be doubtful whether under the circumstances charge can be framed for the offence punishable under Section 324 IPC i.e. 'voluntarily causing hurt by dangerous weapons or means'.
 5. It would thus be a case where the charge needs to be framed for the offence punishable under Section 323 IPC.
 6. Crl.Rev.P. No.305/2016 is disposed of modifying the charge. The petitioners are charged for having committed an offence punishable under Section 323/509/34 IPC.
 7. Crl.Rev.P. No.305/2016 is disposed of in above terms.


PRADEEP NANDRAJOG, J.

SEPTEMBER 09, 2016
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