

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**913 ANTICIPATORY BAIL APPLICATION NO.763 OF 2022**

1. Ayasha Kalandar Shaikh
2. Adil Kalandar Shaikh ..Applicants

VERSUS

- . The State of Maharashtra ..Respondent

...  
Advocate for Applicants : Mr. G.R.Syed  
APP for Respondent : Mr.A.A.Jagatkar

...  
**CORAM : S. G. MEHARE, J.**

**DATE : 21<sup>st</sup> July, 2022**

**PER COURT :-**

1. Heard the learned counsel for the applicants and the learned APP for the respondent-State.
2. Learned counsel for the applicants vehemently argued that this FIR is a full of false allegations involving the entire family members in a serious crime arising out of the matrimonial dispute. He would submit that before lodging the report by the victim, the husband had filed a petition for restitution of conjugal rights against her and it is pending. The said matter was referred to the Mediator, however, the mediation failed. Only to pressurize and show the applicants down, the complainant wife

has taken such a hard stage to spoil the matrimonial relations for ever. The learned counsel for the applicants has referred to the FIR and would point out that the FIR has delayed by four days. Since no incident happened, the delay is natural. The incident as alleged happened in four walls of the house. Since the complainant was not residing in the house of the applicants at the time of falsely alleged incident, the complainant cannot be believed.

3. Per contra, the learned APP argued that besides the relatives of the victim, there are witnesses from neighbourhood. They are the eye witnesses to the incident. They have categorically stated about the role played by each of the accused. Deadly weapon like sword has allegedly been used and an attempt was made to finish the poor and helpless victim. The learned APP would submit that the FIR reveals that the victim had been to the house of her husband to cohabit on 30<sup>th</sup> March, 2022. Therefore, the claim of the applicants that the victim was not residing at the house of the applicants is incorrect. To counter these allegations, the learned counsel for the applicants has referred to the Roznama of R.C.S.No.263 of 2021 and would point out that on 12<sup>th</sup> March, 2022, the matter could not be settled in the Lok Adalat. Hence, the matter was adjourned for

reply to 28<sup>th</sup> March, 2022. On 28<sup>th</sup> March, 2022, the complainant has filed an application for time to file reply and the next date was 6<sup>th</sup> May, 2022.

4. Perused the papers submitted by the learned APP as well as the application and the documents filed on the record. Considering the Roznama of the suit filed by the applicant Sohail, there is a scope to doubt about joining the company of the husband and his family by the complainant on 30<sup>th</sup> March, 2022 when their mediation was failed on 12<sup>th</sup> March, 2022 and on 28<sup>th</sup> March, 2022, she had sought time to file reply and the matter was posted on 6<sup>th</sup> May, 2022. Considering this Roznama, the conduct of the victim falls under the shadow of doubt. The Mediator was trying to pacify the dispute but he could not do it in the Lok Adalat. The alleged incident appears to have been happened on 30<sup>th</sup> March, 2022 when the petition for restoration of conjugal rights was pending. There must be some discord. In view of the aforesaid litigation, without getting satisfied security, a woman would not join the company of the husband. Therefore, there appears substance in the argument of the learned counsel for the applicants that the allegation against the applicants is false and concocted. So far as the eye witness is concerned, the learned counsel has rightly pointed out that the

so called incident is happened in the four walls of the house. Therefore, witnessing the incident happened in four walls appears not possible. Considering the entire aspect of the facts and previous litigation pending in the Courts of law and failure of mediation, this Court believes the applicants. It has not been alleged against the applicants that by using the deadly weapon, they have caused injury to the complainant.

5. In view of these facts, this Court is of the view that this is a fit case to exercise the powers conferred under Section 438 of the Code of Criminal Procedure. Hence, the following order :

**ORDER**

- i) The application is allowed.
- ii) The interim protection granted by way of order dated 22<sup>nd</sup> June, 2022 is confirmed on the same bail bonds and conditions.

**( S. G. MEHARE )**  
**JUDGE**