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

ANTICIPATORY BAIL APPLICATION NO.1006 OF 2022

**RAFIQ LATIF PATHAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

Mr S. G. Ladda, Advocate for applicants;
Mr S. B. Narwade, A.P.P. for respondent/State

CORAM : S. G. MEHARE, J.

DATE : 26th August, 2022

PC.

1. Heard the learned counsel for the applicants and the learned A.P.P. for the respondent.
2. The learned counsel for the applicants would submit that the parties have a history of litigation and lodging reports against each other on many occasions. A false report has been lodged against the applicants. The complainant is in habit of lodging reports against the family members of the applicants. In fact, no incident as such happened but a false story has been cooked. The inconsistent statement has been made against applicant no.1 Rafiq that he assaulted the complainant with an iron pipe on right hand shoulder, however, there are no injuries on right hand shoulder. The injury certificate falsifies the allegations made against the applicant no.1

(2)

Rafiq. So far as the applicant no.2 Shafiq is concerned, bare allegation against him is that he assaulted the complainant with bricks and also abused. Since there were no injuries on the right hand shoulder, it can be inferred that no weapon as alleged is used by the applicant no.1 Rafiq. The learned counsel for the applicants would submit that the offence under Section 307 of the Indian Penal Code is not made out. The material investigation has been over. Therefore, the application may be allowed.

3. The learned A.P.P. has strongly opposed the application contending that the allegations have been levelled against the applicant no.1 Rafiq that he assaulted the complainant with iron pipe on his right hand shoulder. He referred to the injury certificate. However, the injury certificate does not reveal an injury on the right hand shoulder. All injuries are on the left hand and on back. He would also refer to the statement of the complainant recorded under Section 164 of the Code of Criminal Procedure and the other witnesses to point out that there is corroboration to the allegations made against the applicants. Considering the allegations, the weapon is to be recovered from applicant No.1 Rafiq. The offence under Section 307 of the Indian Penal Code is made out. Since the offence is serious, the applicants are not entitled to anticipatory bail.

(3)

4. Perused the papers produced by the learned A.P.P. A consistent statement has been made against the applicant No.1 Rafiq that he assaulted the complainant with iron pipe on his right hand shoulder. However, the medical evidence is contrary. Much less, there is no injury certificate indicating that the complainant has sustained the injury on his right hand shoulder. The complainant has placed on record that the parties are at acute rivalry lodging reports against each other. Be that as it may, whether the offence under Section 307 of the Indian Penal Code is made out or not, is a matter of fact, but, the record reveals that the allegation of assault by the applicant No.1 Rafiq does not co-relate with the body part and not supported with the corresponding injury certificate. Considering the history of litigation between the parties, a possibility of making false allegations cannot be ruled out.

So far as the applicant No.2 Shafiq is concerned, it has been alleged against him that he pelted bricks and abused the complainant. The bricks must have been recovered from the spot, if used by the applicant No.2 Shafiq.

5. Considering the entire material and the facts as discussed above, the Court is of the view that this is a fit case for anticipatory bail. Hence, the following order :-

i) The application is allowed.

(4)

- ii) In the event of arrest, applicant Nos. (i) Rafiq s/o. Latif Pathan and (ii) Shafiq s/o. Latif Pathan be released on bail, on furnishing PB and SB of Rs.15,000/- each, with one solvent surety of the like amount, in C.R.No. 126 of 2022 registered with Police Station Paithan, Taluka Paithan, District Aurangabad, for the offences punishable under Sections 143, 144, 148, 149, 307, 336 and 504 of the Indian Penal Code, on the condition to attend the police station on 28th, 29th and 30th August, 2022, between 11.00 a.m. and 1.00 p.m. and shall co-operate with the Investigating Officer.

(S. G. MEHARE, J.)

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