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

ANTICIPATORY BAIL APPLICATION NO.271 OF 2021

**MUKUND @ MOKINDA S/O RAGHOJI WAKLE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. B. R. Kedar
APP for Respondent/State : Mr. V.M. Kagne

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CORAM : S.G. MEHARE, J.

DATED : 06th OCTOBER, 2022

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant has a case that the first informant is his nephew. He was asking for the partition of the land to grandfather. The grandfather denied to partition the property. However, the complainant suspected that the applicant would not let his grandfather to partition the property. The applicant was working far away from the spot of the incident i.e. around 100 km. On the date of the alleged incident, he was on his duties. The independent eye witnesses did not state against the applicant that he assaulted the complainant and caused him injury. However, the witness specifically states that co-accused Manoj Wakle assaulted the complainant with iron rod on leg and hands. Therefore, naming the applicant in FIR

prove false. He has vehemently argued that apparently the applicant has been implicated falsely in the crime. His attendance register supports his contention. It was not possible for him to come daily from his service place to his village. Therefore, he may be protected.

3. Learned APP has vehemently opposed the application on the ground that the injured has suffered the serious injuries. There are allegations of use of iron rod by the applicant. That weapon is to be recovered. The injured has suffered the grievous injuries. It was an attempt to commit the murder. The offence is grave. For recovery of iron rod, the custodial interrogation of the applicant is essential.

4. The issue whether the applicant was present on his duty on the date of the alleged incident was raised. Hence, the investigating officer made a specific investigation about the defence of *alibi*. He recorded the statement of the Executive Engineer of the concerned department. He has categorically stated that on the day of the alleged incident, the applicant was present in the office. The machines on which the applicant was doing the job were unused. He was the cleaner. His duty was to maintain the machine. He also stated that the applicant used to visit his office to mark his attendance between 10 to 11 am and then he used to go back to his village. Since he was a cleaner, no other work was given to him. It has also been specifically investigated by the investigating officer that on the day of

the incident, the concerned officer noted his attendance and saw him present physically.

5. The question whether the applicant can reach 100 km daily may be considered on merit. However, the eye witnesses did not support the prosecution that the applicant was one of the assailants. The co-accused Manoj has allegedly assaulted the complainant with iron rod on his leg and hands where the complainant sustained the fracture injury to tibia fibula. *Prima facie*, it appears that the independent eye witnesses did not support the prosecution. In view of absence of direct evidence of assault against the applicant, his prayer for anticipatory bail may be considered. Hence, the following order :

ORDER

(A) Application is allowed.

(B) The order granting interim protection to the applicant dated 19.03.2021 is confirmed on the same terms and conditions.

(S.G. MEHARE, J.)