

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

**ANTICIPATORY BAIL APPLICATION NO. 1082 OF 2022**

1. Sagar Namdeo Bothe
2. Pankaj Bhausahab Shinde ...Applicants

VERSUS

The State of Maharashtra ...Respondent

...

Mr. Avinash N. Barhate Patil, Advocate for the applicants.

Mr. V.M. Kagne, APP for the respondent-State.

...

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

**DATED : 28<sup>th</sup> SEPTEMBER, 2022**

**PER COURT:-**

1. Heard learned counsel for the applicants and learned APP for the State at length.

2. The applicants have a specific case that the injured himself has sworn in an affidavit stating that the present applicants did not assault him. However, this material aspect was ignored by the investigating officer. The applicants have a case that they took the injured to the hospital. Since the fact as regards the confusion involving the applicants in crime came to the light through the affidavit of the injured himself, nothing is to be recovered from them.

3. Learned APP has strongly opposed the application contending that there was one person having the same name Sagar. It has been clarified that said Sagar was also involved in the crime. He

is the main accused in the crime. He has also argued that the injured has given the statement in the hospital after discharge from the hospital. In that statement, the injured has stated the name of the applicants as assailants. He has stated that the present applicants have assaulted him with iron rod and wooden sticks.

4. Considering the arguments of both sides and the statement of the injured before the police and his affidavit before the Sessions Court, it is clear that the injured himself has clarified that the present applicants did not assault him. The injured is the best witness to the incident. However, it appears that the police did not have the information or clarification on this fact and the copy of the affidavit was not supplied to the investigating officer. Be that as it may, it is clear that the applicants were not involved in the incident. In such circumstances, sending the applicants behind the bar would not be appropriate. Therefore, the application deserves to be allowed. Hence, the following order :

#### **ORDER**

(A) The Application is allowed.

(B) Interim protection granted to the applicants by order dated 12.08.2022 is confirmed on the same terms and conditions.

**(S.G. MEHARE, J.)**