

**ORDER BELOW EXH. 20 IN SESSIONS CASE NO. 432 OF 2024**  
**MHNS010091332024**

(The State of Maharashtra through Panchavati Police Station,  
Nashik V/S. Badal @ Pravin Pawan +1)

This is the application under section 483 of BNSS (Bharatiya Nagarik Suraksha Sanhita), 2023 filed by the applicant-**accused no.2 Hitesh Jagannath Wagh** in Crime No.510 of 2024 registered with Panchavati Police Station, Nashik for the offences punishable under sections 103(1), 238, 3(5) of BNS (Bharatiya Nyaya Sanhita).

2] The applicant contended that he has not committed any offence. He is falsely implicated in the crime. No offence is made out against him. From perusal of the FIR it appears that applicant was not named as accused. Deceased and accused no.1 were knowing each other and accused no.1 assaulted the deceased by cement paver block on his head. The alleged witnesses were not knowing the applicant and no test identification parade carried out. He is acquainted with accused no.1 and was only present at the spot. On the basis of the said fact he is falsely implicated in the present crime. Immediately after the incident, he started his two wheeler to leave the spot. But at that time, accused no.1 threatened him and forcefully seat on his two wheeler. He has not helped accused no.1 to ran away from the place of incident and the accused no.1 forcefully sat on on his vehicle. So, they both are seen together He is falsely implicated in the crime. No role is attributed to him. He has no criminal antecedent. He is married and his family is dependent on him. He is in service and if he is not released on bail, then his family will be starved. The investigation

is completed and charge-sheet is filed. He is ready to abide by any conditions imposed by the court if he is released on bail. He has prayed for grant of bail.

3] APP filed say at Exh. 21 and I.O. filed say at Exh. 22. They have stated that the offence is of serious nature. Both the accused committed the offence of murder of deceased by cement paver block. They are seen together coming to the spot on the motor cycle of accused no.2. Their clothes are seized and sent for CA. One crime is registered against the accused no.2. If he is released on bail, he will threat the witnesses. Investigation is completed and charge-sheet is filed Hence, they have prayed for rejection of bail.

4] The brother of deceased intervened the application by filing say at Exh.23. He has objected similar to that of prosecution. The incident is captured in CCTV footage. There are eye witnesses to the incident. The accused also took participation in the crime. Hence, he has prayed for rejection of bail.

5] Heard the learned counsel for the accused, Id. Counsel for intervenor and learned APP. They have argued as per their stand taken as above.

6] I have gone through application, say, arguments and police papers. In this case, before the court the CCTV footage of the incident was played in presence of all. It appears that some persons seen to be scuffling with each other and one person in half pant has deliberately pushed one two wheeler, which is alleged to be of

accused no.2. The CCTV is not clear. No paver block is seen in the CCTV. It appears that after the incident, one person ran away from the spot. Accordingly to the police he is the eye witness with whom initial dispute was going on and his name is Badal Mishra.

7] The said Badal Mishra and the said deceased were quarreling with each other at the time of incident. As per his statement their dispute was on the count of work. Thereafter, he has stated that two person came on motorcycle. They intervened in their dispute. Both of them were assaulting the deceased by kicks and fists blows. That time, the deceased deliberately pushed the two wheeler of them and one of them got angry. The prosecution alleged that he was accused no.1 and not the present accused no.2. The accused no.1 took one cement paver block and assaulted on the head of the deceased. Witness Badal Mishra has not stated that the accused no.2 assaulted the deceased. He tried to intervene but both the accused slapped him. He saw that the deceased fallen down and blood was oozing from his head. He then ran away from the spot. As per the evidence of main witness Badal Mishra it is the accused no.1 who has assaulted by paver block on the head of the said deceased. Till then, accused no.1 & 2 were only quarreling with the deceased and their intention was not common to kill the deceased. It was the intention of accused no.1 which is gathered from the spot and at the time of incident, that he suddenly took the cement paver block and assaulted on the head of the deceased. The accused no.2 did not share this common intention with him. At the most the accused no.2 is responsible for voluntarily causing simple hurt. Moreso, Badal Mishra and accused no.2 are not known to each other. No T.I. parade was

conducted. The CCTV footage appears to be from 300 to 400 meter is is obstructed by so many articles in between. It does not appears that accused no.2 assaulted the deceased by paver block. Yet the CCTV footage report from CA is to be arrived. But looking to the same and the role of accused no.2 as per main eye witness Badal Mishra, the murder appears to have committed by the accused no.1.

8] Two more eye witnesses appears to have been examined by the police and who statements were recorded after 14 days of the incident and their names are Prakash Pandurang Gavali and Laxman @ Lakhan Raju Pawar. As per their statement before police Prakash was riding motor cycle and Laxman was seating on pillion seat. The were going to home that time and they saw one scuffle was going on between two persons. Thereafter, two more people came on two wheeler and one more in full pant. As per prosecution, he was accused no.2 and one was in half pant i.e. the accused no.1. As per the prosecution, Badal Mishra the eye witness was also in full pant and the deceased with him he was disputing was in half pant. Both the witnesses stated that one person wearing half pant took pave block and assaulted 4 to 5 times on the head of deceased. As per the prosecution, he is accused no.1. The PM. report also shows 6 injuries on the deceased and the injury no.1 to 5 were on the head and the 6<sup>th</sup> injury is on the lower lip and is of abrasion. The 5 injuries as per the statement of both the witnesses is caused by the accused no.1 and appears to be corroborated by PM. report. Thereafter, both of them have stated that the another person with full pant i.e. accused no.1 also assaulted by paver block. They have not stated that he assaulted on the head of the deceased as they have stated against the accused

no.1 on the head of deceased for 4 to 5 times. So, prima facie both the witnesses have not stated that the accused no.2 assaulted by paver block on the head of the deceased. This incident is not captured in the CCTV footage. The statement of both the witnesses was recorded under section 183 of BNSS. Under Section 183 the witness Prakash Gavali only stated that out of the two, one has assaulted by paver block on the head of the deceased. He has not stated that the other i.e. accused no.2 also assaulted on the head of the deceased.

9] So, prima-facie from the main statement of the eye witness Badal Mishra and the statement under section 183 of BNSS of Prakash Gavali, it does not appears that the accused no.2 assaulted the deceased by paver block on the head of the deceased. It appears that the accused no.1 assaulted 4 to 5 times on the head of the deceased by paver block. Here the accused no.2 did not share common intention with the accused no.1 as accused no.1 suddenly took the paver block from the spot. It is not the case of prosecution that the accused no.2 holded the deceased while the assault. The most important point in this case is the witnesses and the accused no.2 are not known to each other. No T.I. parade was conducted of the accused no.2. The same is fatal to the prosecution's case. In this case, the clothes of accused no.2 were seized but no blood stains were found from the clothes of accused no.2. It is allegation against accused no.1 that he burnt his blood stained clothes and the same is revealed from the memorandum panchanama of accused no.1. So, prima-facie at the most case of causing simple hurt appears to be against the accused no.2. Already, he is in jail from past 4 months

and the investigation is completed and charge sheet is filed. Looking to the weak nature of evidence against him he is entitled for bail on suitable terms and conditions. Hence, the following order :-

**ORDER**

- 01] The application is allowed
- 02] The accused namely **Hitesh Jagannath Wagh** be released on bail on executing personal bond of Rs. 50,000/- with one or more surety in the likewise amount in in Crime No.510 of 2024 registered with Panchavati Police Station, Nashik for the offences punishable under sections 103(1), 238, 3(5) of BNS (Bharatiya Nyaya Sanhita).
- 03] The accused shall attend the police station on every first Monday of month between 11.00 p.m. to 2.00 p.m. till evidence of eye witnesses is recorded and as and when his attendance is required by the I. O.
- 04] He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any police officer to tamper with the evidence.
- 05] He shall not tamper the prosecution evidence in any manner.
- 06] He shall not leave India without permission of this court.
- 07] He shall not commit similar type of offence.
- 08] He shall furnish his detailed address with proof and mobile number.

(R. R. Rathi)

Additional Sessions Judge-6,  
Nashik.

Date : 15.03.2025

