

ORDER BELOW EXH. 28 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.1 Badal @ Pravin Pawan 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 is permanent resident of the address mentioned in the application. He has not committed any offence. He is falsely implicated in the crime. No offence is made out against him. Bail to co-accused Hitesh Wagh is granted. So, he is entitled for bail on parity. He is in jail from 10.09.2024. The investigation is completed and charge-sheet is filed. Nothing remained to be seized from him. Keeping him behind bar will not serve the purpose. He has co-operated in the investigation. His family is dependent on him. 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. 29 and I.O. filed say at Exh. 30. 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. Nine crimes are pending against the accused no.1. On his

memorandum statement, it was found that he burnt the pant worn by him at the time of the offence. The CCTV footage and CA report is awaited. 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.31. 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. He is the main culprit. Already, his previous bail application was not pressed without permission to file fresh bail application and the second bail application is not maintainable. He relied on the ratio of Abdul Ahmed Abdul Nabi Shaikh V/s. State of Maharashtra of Hon'ble Bombay High Court. He strongly opposed the bail application. Hence, he has prayed for rejection of bail.

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

6] The counsel for accused relied on following case laws. :

- (1) Balkrishna Tukaram Angre v/s. The State of Maharashtra of Hon'ble Supreme Court dated 22.09.2017 in Criminal Appeal No.1704 of 2017
- (2) Waris Giyasuddin Raja Shaikh V/s.The State of Maharashtra & others of Hon'ble Bombay High Court dated 19.12.2022 in Criminal Appeal No. 844 of 2022.
- (3) Maulana Mohd. Amir Rashadi V/s.State of Uttarpradesh LAWS (SC)-2012-1-28

(4) Madan Singh V/s.State of Haryana 2013 (4) R.C.R. (Criminal) 120.

7] 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 form the spot. Accordingly to the police he is the eye witness with whom initial dispute was going on and his name is Badal Mishra.

8] 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 intervned 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 accused no.2. The accused no.1 took one cement paver block and assaulted on the head of the deceased when 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. 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. The incident is captured in CCTV from 300 to 400 meters and only accused no.1 is seen assaulting the accused. Yet the CCTV footage report from CA is to be arrived. But looking to the same and as per main eye witness Badal Mishra, the murder appears to have committed by the accused no.1.

9] 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 paver block and assaulted 4 to 5 times on the head of deceased. As per the prosecution, he is accused no.1. The P.M. report also shows 6 injuries on the deceased and the injury no.1 to 5 were on the head and the 6th 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 P.M. report. Thereafter, both of them have stated that the another person with full pant i.e. accused no.2 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. 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. So role of accused no.2 is altogether different from present accused.

10] 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 are not known to each other. No T.I. parade was conducted of both the accused. The same is fatal to the prosecution's case. But witnesses have properly stated that accused no.1 committed the murder. So T.I. parade question will be seen at the time of merits of the 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. As bail to accused no.2 was granted, hence, on this change in

circumstances, the present bail application can be filed. But role of accused no.1 is different than the accused no.2. Hence, parity does not applies. The cited case laws filed by both the parties are not applicable to the facts and circumstances of the case being different. Hence, not discussed. Looking to strong nature of evidence against him and the offence is of murder and nature of offence is serious and punishment is severe, he is not entitled for bail. Hence, the following order :-

ORDER

The application is rejected.

(R. R. Rathi)
Additional Sessions Judge-6,
Nashik

Date : 03.04.2025