

the appellant seeks his enlargement on bail, in connection with C.R.No.I-1037/2021, registered with the Niphad Police Station, Nashik, for the alleged offences punishable under Section 302, 143, 147, 148, 149, 323, 504 of the Indian Penal Code and Sections 3(2)(5) and 3(2)(v)(a) of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 37 (1)(3), 135 of the Maharashtra Police Act.

3. Learned Counsel for the appellant submits that taking the prosecution case as it stands, no offence under Section 302 of the Indian Penal is made out. Learned Counsel for the appellant further submits that the allegation as against the appellant is that he alongwith other co-accused assaulted deceased – Ravindra Wagh with fist and kick blows. He submits that a perusal of the statement of the sole eye-witness – Anand Eknath Khairnar, who had accompanied the deceased, reveals that the deceased was assaulted by fist and kick blows by the accused, including the appellant. He further submits that although in the last paragraph it is alleged that sticks were also used,

the post mortem report does not support assault by stick / log. He submits that the appellant is in custody since 21st December, 2021 and as such, he be enlarged on bail.

4. Learned APP opposes the grant of bail. Learned APP, however does not dispute that there is only one eye-witness in the said case i.e. Anand Khairnar, who was present on the spot with the deceased – Ravindra Wagh, at the time of the incident. Learned Counsel for the respondent No.2 also opposes grant of bail. He submits that there is recovery of a wooden log at the instance of another co-accused and as such, the same would reveal that a log was used in the commission of the offence.

5. Perused the papers. Admittedly, **(done)** the FIR in the said case is lodged by Ravindra Wagh's brother – Bhaginath Wagh on the basis of the information received by him from Anand Khairnar, an eye-witness and an injured in the said case. Admittedly, Anand Eknath Khairnar is the sole eye-witness in the said case. Anand Khairnar has

alleged that on 20th December, 2021, he alongwith Ravindra Wagh (deceased) had gone to the appellant's hotel by the name Sangam Hotel, at about 12.00 midnight and had asked for alcohol. He has stated that the waiter in the said hotel refused to give alcohol, pursuant to which, there was an altercation between them, after which the waiter agreed to serve alcohol to him and Ravindra Wagh (deceased). He has further stated that thereafter, they started walking and after they reached Abhishek Hotel, they saw some persons coming on a scooty. He has stated that he identified the appellant and the waiters, who were in the hotel i.e. Suraj and Badrul. He has further stated that the said persons pulled him down by holding his neck and questioned Ravindra Wagh (deceased) and thereafter, started assaulting him with fist and kick blows. He has stated that thereafter, three more persons came to the spot. He has further alleged that on seeing the assault, he ran away from the spot and went near Abhishek Hotel and disclosed the same to Kailash Shinde. Thereafter, Ravindra Wagh (deceased) was taken to the hospital, where he succumbed to the injury. It appears that the ambulance was summoned by one of the co-

accused by calling 108. The sole eye-witness – Anand Khairnar, in his statement has not attributed any specific overt act of assault by wooden log by the appellant. Infact, a perusal of the post mortem report reveals that the deceased – Ravindra Wagh had sustained the following injuries.

- “17. 1) Contusion present over right side of neck, of size 15 cm x 12 cm, reddish in colour.
2) Abrasion presents over right arm antero – lateral aspect, of size 7cm x 6cm, red.
3) Abrasion presents over left side of back, of size 2.5 cm x 1 cm, red.
4) Abrasion presents over left side of buttock, of size 6 cm x 5 cm, red.
5) Abrasion presents over right leg posterior aspect, of size 7 cm x 1.5 cm, red.*

On dissection of neck – Bright red haematoma present in the strap muscles and neck of muscles just below the injury no.1.”

The cause of death is stated to be ‘death due to injury to spine and spinal cord’.

Column No.17 of the Post Mortem Report reveals that the deceased has sustained five abrasions and one contusion.

6. Although, learned Counsel for the appellant submits that the offence would not be one under Section 302, but would be a lesser offence, the same is a matter to be decided by the trial Court. The appellant is in custody since December, 2021. Prima facie, in the facts, the appellant has made out a case for grant of bail. Accordingly, the appeal is allowed on the following terms and conditions.

ORDER

- (i) The appeal is allowed;
- (ii) The order dated 23rd March, 2022 passed by the learned Extra Joint District Judge & Addl. Sessions Judge, Niphad, below Exhibit – 07 in Special Sessions Case No. 16 of 2022 is quashed and set-aside;
- (iii) The appellant be enlarged on cash bail in the sum of Rs. 25,000/-, for a period of six weeks;
- (iv) The appellant shall within the said period of six

weeks, furnish P.R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount;

(v) The appellant shall attend the trial Court at all dates, unless exempted;

(vi) The appellant shall keep the trial Court informed of current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

7. The appeal is disposed of on the above terms.

8. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.