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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1310 OF 2022

Chundicharan Sanatan Bid ... Appellant

vs.

1. The State of Maharashtra

2. Palaram Dhanaram Tusamad ... Respondents

Mr Ashok P. Mundargi, Senior Advocate i/b Mr Meghdeep M. Oak, for the Appellant.

Ms. S.S. Kaushik, A.P.P for the State.

Mr Siddharth Jagushte a/w Mr Kanishk Waghware, for the Respondent No. 2.

Mr Sanjay Lokhandemali, PSI, Navghar police station, Thane.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 1st AUGUST, 2023

P.C. :-

1. Heard learned counsel for the parties.

2. By this appeal, preferred under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SC ST. Act') the appellant seeks his enlargement on bail in connection with C.R. No. 366 of 2022 registered with Navghar Police Station, Thane for the alleged offences punishable under sections 302, 201, 204, 143, 147, 148, 149 of

the Indian Penal Code and under Section 3(2)(v) of of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SCST. Act').

3. Perused the papers. The first informant, is the father of deceased-Krushna who was working with the appellant's firm, by the name "Nagmani Imitation Jewellery". It is alleged by the first informant, that his son-Krushna left home for work in the morning on 7th May 2022 at 7.00 am, however, he did not return at around 6.00 pm, as he would usually return. According to the first informant, that on 7th May 2022 at around 12.30 pm, he saw a car come to the hospital i.e. Krishna Hospital where he was working; that he saw some people getting down from a car and picking up one person and taking him to the hospital; and, that the said person was in an unconscious state. He has stated that he identified the said person, to be his son-Krushna. Since, there was no doctor available in the said hospital, the said persons put his son in the car and left from Krishna Hospital. The first informant has stated that on enquiring with the watchman and the people at the gate of the hospital, he learnt

that his son was taken to Family Care Hospital at Navghar, pursuant to which he reached the said hospital and met the doctor in the hospital, who disclosed, that his son had succumbed to the injuries. Pursuant thereto, the first informant lodged the aforesaid FIR, as against the appellant and others.

4. Learned senior counsel for the appellant submitted that Krushna(deceased) was working with the appellant's firm "Nagmani Imitation Jewellery", as a Sweeper. He submitted that Krushna(deceased) had committed theft and that the said theft was captured in the CCTV cameras. He submitted that after showing the said CCTV footage to Krushna(deceased), he was assaulted by the security persons working in the said firm and by the appellant. Pursuant to the said assault, Krushna(deceased) sustained injuries. Learned senior counsel further submitted that when there was no movement, Krushna was rushed to the hospital by the appellant in the car. Learned senior counsel for the appellant submitted that even if the prosecution case, is taken as it stands, the offence, if any would not be one under section 302 but would be a lesser offence i.e. under section 304 of the

IPC. In support of his submission, the learned senior counsel relied upon the post mortem report of Krushna which is at page 136 of the appeal memo. He further submits that the appellant had absolutely no motive to cause Krushna's death. He submits that the appellant is in custody since 8th May 2022 for more than a year and as such, the appellant be enlarged on bail.

5. Learned APP vehemently opposed grant of bail. She submitted that the manner in which Krushna(deceased) was assaulted, the act of appellant and other co-accused, would certainly constitute an offence under section 302 of the IPC. In support of her submissions learned APP relied upon the CCTV footage collected by the police which is at page 195.

6. The CCTV footage which is at page 195, dated 9th May 2022 shows Krushna(deceased) was assaulted by the appellant and other co-accused from approximately 10.00 am to 12.00 noon. The panchanama, sets out the manner in which Krushna was assaulted by the appellant and other co-accused i.e. by fist and kick blows and by wooden stick. It appears after assaulting Krushna for almost 2 hours, at about 2.03 pm, as

Krushna(deceased) was lying still, some of the accused tried to revive him and even put on a pant and shirt on him, and thereafter, put Krushna in a car and took him to the hospital, as noted above. It appears that Krushna was first taken to Krishna Hospital and since there was no doctor in the said hospital, he was taken to another hospital, however, he was declared dead on arrival. A perusal of the postmortem report in particularly column 17 shows that Krushna had suffered blunt trauma, bruise, abrasion all over the body and cut wound on both legs. The cause of death of Krushna was 'due to blunt trauma, intracranial hemorrhage and intraperitoneal bleeding'. It appears that Krushna had not sustained any fracture. The appellant is in custody since 8th May 2022 for more than a year.

7. Whether or not the offence could be one under section 302 or lesser offence it will be decided by the trial court at the stage of trial and after evidence is recorded.

8. Considering the manner in which the incident has taken place, the postmortem report of Krushna and the fact, that the appellant is in custody since 8th May 2022, the appeal is allowed

and the appellant is enlarged on bail, in connection with C.R. No. 366 of 2022 registered with Navghar Police Station, Thane on the following terms and conditions:

ORDER

- (i) The appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each with one or more sureties in the like amount;
- ii) The appellant shall attend the concerned Police Station, on the first Saturday of every month between 10.00 a.m. to 12.00 noon, till the conclusion of the trial, unless the date coincides with the trial Court date;
- iii) The appellant shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;
- iv) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, or any

other witnesses concerned with the case.

(v) The appellant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

(vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the appellant, in the Registry of the trial Court, within one week of his release.

9. Appeal is allowed in the aforesaid terms and is accordingly disposed of.

10. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)