

3. The applicant (original accused No.3) alongwith other co-accused vide judgment and order dated 11th January 2019, passed by learned Additional Sessions Judge – 4, Nashik, in Sessions Case No.284 of 2016, has been convicted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code and is sentenced to suffer imprisonment for life and to pay fine of Rs.25,000/- each, in default, to suffer further rigorous imprisonment for one year.

4. Perused the papers with the assistance of the learned counsel for the parties. According to the prosecution, Ajinkya Chavan (deceased) was murdered by applicant and other co-accused, on 18th June 2016. Admittedly, the prosecution case rests entirely on the circumstantial evidence. As far as the applicant is concerned, the circumstances alleged against him are that of last seen and finding of some incriminating messages from a mobile, which was seized from the original accused No.1. As far as the evidence of last seen is concerned, the prosecution has examined Purwesh @Pawan Dange

(PW3). According to the said witness, he saw deceased – Ajinkya consuming alcohol near his house, on an open plot of land on 18th June 2016, at about 10:30 p.m. He has stated that he saw some unknown persons alongwith Ajinkya. Out of the said persons, he has stated that 2 of them were Ganesh Ghusale (original accused No.5) and the present applicant. The said witness has stated in his examination-in-chief that he saw 3 persons going together on the said date. In his cross-examination, the said witness has stated that he does not know how Ajinkya (deceased) came, where he went and with whom. The trial Court has acquitted Ganesh Ghusale (original accused No.5) and there is no appeal against acquittal of the said acquitted accused. As far as the evidence of incriminating messages found on the mobile phone, which was seized from original accused No.1, is concerned, it appears that the witness, who was a panch to the seizure of the said mobile, has turned hostile. With respect to the incriminating messages that were found/retrieved from the mobile is concerned, there is no panchanama with respect to the same. Learned APP is unable to show any material or any other evidence adduced by

the prosecution, to prove the said incriminating messages, more particularly, when the panch to the seizure of the mobile phone, has turned hostile. The applicant is in custody for the last 7 years. The Appeal has been admitted by this Court vide order dated 29th March 2019 and the same is not likely to come up for the hearing in the immediate near future.

5. Considering the evidence on record as stated aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;
- ii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

- iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

6. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.