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3. The applicant, vide Judgment and Order dated 17th January, 2023, passed by the learned Additional Sessions Judge, Nashik, in Sessions Case No. 168 of 2018, has been convicted for the offences punishable under sections 302 and 201 of the Indian Penal Code. For the offence punishable under Section 302 of the Indian Penal Code, the applicant has been sentenced to undergo life imprisonment and to pay fine of Rs.25,000/-, in default, to suffer simple imprisonment for one year and for the offence punishable under Section 201 of the Indian Penal Code, the applicant has been sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.25,000/-, in default, to suffer simple imprisonment of six months.

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence i.e. the evidence of last seen of the deceased with the applicant and two other co-accused; recovery of blood stained sword at the instance of the applicant and showing of

the spot by the applicant. As far as last seen evidence is concerned, the prosecution has examined P.W.5 – Shankar Bagar and P.W.6 – Bharatabai Lande. P.W.5 – Shankar in his evidence has stated that on 4th January, 2018 at about 7.00 to 7.30 p.m., when he was walking near the water tank, he saw the applicant, Yogesh and Deepak alongwith Sachin (deceased) on a motorcycle. He has disclosed in his cross examination that they were going to Aashewadi.

5. P.W.6 – Bharatabai Lande, in her evidence has stated that on 4th January, 2018, at about 8.00 p.m., when she came near water tank, she saw Deepak, Yogesh and Popat (applicant) near the water tank going on a motorcycle with Sachin (deceased).

6. It is pertinent to note that both, Yogesh and Deepak have been acquitted by the learned Sessions Judge for the reasons set out in the Judgment, though the evidence of last seen is also *qua* them and has convicted the applicant on the basis of the very same evidence and recovery of the blood stained sword at the instance of the applicant. The said sword was recovered from an open space accessible to all. It

appears from the evidence of P.W.10 – Pravin Padvi, the Investigating Officer that there was several cases registered against the deceased including one under Sections 302, 326, 307 of the Indian Penal Code. There is no motive brought on record by the prosecution to show that the applicant was on inimical terms with the deceased and as such, had motive to murder him.

7. Considering the aforesaid and the fact that the applicant is in custody from more than five years and nine months and the fact that the appeal is of the year 2023 and is not likely to be heard in the immediate near future, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail on the following terms and conditions:

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in four

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.

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

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.