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2] Both the Applicants vide judgment and order dated 18/12/2019 in Sessions Case No. 522/2013 (The State vs. Aamir Salim Shaikh and one another) suffered conviction for offence punishable under Section 302 of the Indian Penal Code and are sentenced to undergo life imprisonment with fine of Rs 50,000/- each and in default to undergo simple imprisonment for six months.

3] In brief, case of the prosecution is as under:-

4] Informant Munaf, close friend of deceased Ammad alias Ammu Nazir Shaikh alleged that Applicants/Accused persons murdered Ammad out of old differences. The prosecution case is based on testimony of seven witnesses viz. Sayyad Hasan Baig, a panch on spot, seizure of clothes of deceased and Accused, Dr. Prashant Bhimrao Waghmare who has conducted postmortem, Imran Abdul Rehman Shaikh, an eye witness, Munaf Abdul Rajjak Shaikh, an eye witness, Bashir Ahmad Sultan, witness, Ainulhaq Jairhulhaq Ansari, a panch witness on discovery and Shailendra Raghunath Nagarkar, Investigating Officer.

5] We have appreciated testimony of two eye witnesses viz Imran who is examined at Exhibit-36 and Munaf who is examined at Exhibit-40. Munaf in his evidence has stated that Applicants Amir and Kamran have committed offence in question. It is claimed that third accused Tariq was holding a big knife in his hand and was beating

deceased Ammad. He has specifically stated that Applicant Amir had stabbed the deceased in stomach by knife.

As far as Applicant Kamran is concerned, said witness has stated that Kamran has stopped him from saving Ammad from getting attacked.

6] The motive attributed as could be inferred from testimony of said two witnesses is, deceased Ammad interfered in the quarrel in between accused persons and Rashid and defended Rashid.

7] As far as testimony of Imran who is examined at Exhibit-36 is concerned, he appears to have not supported the case of the prosecution.

8] As such, even if testimony of Munaf who is examined at Exhibit-40 is appreciated, what can be noticed is, he has named Applicant Amir to be a person who has given effect to the crime in question by giving stab injuries to deceased. As far as Kamran is concerned, his role is that of restraining Munaf from saving the deceased.

9] Once it is established from the record particularly testimony of Investigating Officer at Exhibit-52 and Dr Prashant Waghmare at Exhibit-31 that Ammad died homicidal death, this Court from aforesaid evidence is satisfied that Applicant No.1 – Amir Salim

Shaikh is involved in the commission of offence and has in fact given effect to the offence by stabbing the deceased Ammad.

10] In view of aforesaid evidence, in our opinion, case for grant of bail by Accused No.1- Amir Salim Shaikh is not made out as there appears to be prima facie case against him. As such prayer for bail moved by Accused No.1 - Amir Salim Shaikh stands rejected.

11] As far as prayer for grant of bail by Accused No.2 – Kamran son of Asif Khan is concerned, considering the nature of role attributed to him and the fact that nothing incriminating is seized from him, in our opinion he deserves to be released on bail during pendency of appeal.

12] Accused No.2 – Kamran Asif Khan is directed to be released on bail on execution of P. R. Bond of Rs 25,000/- with one or two local sureties in the like amount. He shall not issue threats to the prosecution witnesses. If he is found involved in similar type of offence, liberty is granted to the State to move for cancellation of his bail. Accused No.2 – Kamran Asif Khan shall attend the concerned Police Station in the first week of every even month.

13] Both the Applications are accordingly disposed of.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]