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Sessions Case No. 44/2023.
Sandip V/s. State.
(CNR No. MHYA010006792023)

FINAL ORDER BELOW EXH. NO.2.
(Delivered on this 28th Day of April 2023)

1. Accused/applicant Sandip Uttamrao Wanjari invoked jurisdiction of this court vide Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime No.994/2022 registered with Kalamb Police Station, District Yavatmal, for the offence punishable U/secs. 302, 307 of the Indian Penal Code.
2. Afterwards filing of the final report vide section 173 of the Code of Criminal Procedure, the accused applicant herein knocked doors of this court with instant bail application and crave for his released on suitable bail.
3. ***Bonsai outline of the FIR states in volume that*** the informant as well as accused hails from Thalegaon, Tq. Kalamb. The informant is blessed with a son and a daughter. She is living along-with her family with son Akash. On 13.12.2022, at about 06.00 PM she received a phone call, whereby she was informed that her son Akash is lying in injured condition in agricultural field of Sakharam Kalal at Shankarpur Shet Shiwar. She immediately left towards the spot. While proceeding she met with police, who were conveying injured Akash to Government hospital Kalamb. Thereafter, she also went to the hospital. She met injured Akash and asked him, what has happened, whereby he narrated that on 13.12.2022 he met Sandip Wanjari i.e. applicant-accused. At about 2.00 PM they both went towards Mendhala on the motorcycle of applicant. Finally, they reached in Shankarpur Shiwar, where the applicant-accused raised quarrel with him over an issue of hand-loan amount of Rs.10,000/-. In the same spat, the applicant-

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accused brought petrol in one bottle and poured it upon him and set him on fire. He further informed that, therefore he had sustained burn injury. On the strength of such sharing of incident, the informant gathered courage and went to Kalamb police-station and lodged complaint against the accused. On the *caudex* of said report, crime bearing No. 994/2022 for the offence punishable u/s 307 of the Indian Penal Code was registered against the accused. Thus, the informant set the criminal machinery into action.

4. Subsequently, during medical treatment the injured Akash breathed his last. He succumbed to burn injuries. Meanwhile, his dying declaration was also recorded. Post demise offence punishable u/s 302 was added in aforesaid crime. Amid investigation, the applicant-accused was arrested, interrogated and remanded to MCR on 16.12.2022 so on till date. In the background, instant second application for bail.

5. *Per* accused he is innocent and falsely implicated in the crime. He has no concern at all with alleged felony. The *actus reus* posed against him is baseless. He is into MCR since 16.12.2022. As such there remains nothing to be interrogated with him. Investigation in instant crime is already over and Charge-sheet is filed. He is ready to cooperate in further investigation, if any. He is also ready to attend trial regularly. The applicant is not involved in the crime. Story is concocted. There is no direct evidence against the accused. The dying declaration is cooked up. He has no past black antecedents. The material ingredients of offence of murder are not made out. There is no need of further custodial interrogation of the accused applicant. On all these counts he implored for conferring suitable bail and oblige.

6. *Refuting stance*, the prosecution raised equipotent objections for freeing of accused through their detail reply below Exh.04.

According to them, offence leveled against the accused is grave in nature. Capital punishment is prescribed for the same. He has played major role in the offence. He has brutally killed the deceased. Mere filing of charge sheet is not the sole ground to release him and thus application is liable to be dismissed. There is possibility of tampering with the prosecution witnesses because most of the prosecution witnesses are residing in the same village. On the count of gravity of crime, prosecution prayed for rejection of the application in *limine*.

7. Heard learned advocate Mr. S.M. Ali for the accused applicant and learned PP Mr. V.S. Telang for the prosecution, at length. Scanned say, copy of FIR, and other documents pertaining to investigation keenly.

8. While pondering over the submissions made across the bar relating to the grant of bail it is epochal to look into the prime considerations of the bail vide section 439 of the Code of Criminal Procedure. The Hon'ble Supreme Court has, in *catena* of judgments, outlined the considerations on the basis of which discretion under Section 439 of the Code of Criminal Procedure has to be exercised while granting bail. A useful reference on the point can very well be made from magnificent verdict of the Hon'ble Supreme Court in the case of ***Gurcharan Singh v. State (Delhi Administration), (1978) 1 SCC 118***. Certain important factors that are always considered while exercising discretion for conferring bail which *inter-alia* relates to *prima-facie* involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused. A gainful reference can also be made from the verdict of Hon'ble Supreme Court in the case of ***State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21***. The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which

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mainly depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. In the light of said legal scenario present application seeking regular bail deserves due deliberation.

9. Offence punishable under section 302 of the Indian Penal Code is alleged against the accused applicant. Indeed, the alleged offence is serious in nature and contemplate death penalty for the same. At the outset, before analyzing merits of the application, it is epochal to note here that investigation in instant crime is already over and charge-sheet is duly placed before this court, thus as such investigation as to all aspects is winded up. Interrogation with present accused seems to be over and the final report / charge-sheet is filed in the court and it is now stand over for further due deliberation cum trial. As of now, the investigation as regards accused applicant is concerned is already over.

10. Having seen FIR it seems that the informant is not an eye witness of the incident. Her knowledge is based upon second hand information. The FIR is reflecting the name of the accused, however the informant is not having direct knowledge about the incident. At the most, the FIR is useful for setting criminal action into motion. As such, merely the name of the applicant-accused is attributed in the FIR is not the sole reason to deject instant bail. According to the informant, one Raju Kumare resident of Shankarpur made a phone call to her and informed about her son, who was allegedly lying in injured condition. Thus, it is Raju Kumare, who is first person who has seen the deceased. Now adverting towards statement of Raju Kumare it seems that the injured Akash was drunk so also he was having burn injuries and he was completely naked, when he allegedly met him. According to this witness, injured Akash was in a position to speak and he was craving for

water so also insisting to talk with his mother. He offered clothes to injured Akash and thereafter made a phone call to the informant. In his statement the witness Raju Kumare nowhere stated that it is the accused, who set the injured Akash on fire. Even it is not the case that despite in speaking position injured Akash stated Raju Kumare that the accused by pouring petrol has set him on fire. Ultimately, this all looks little dubious. On this count, no explanation is offered before this court.

11. Virtually there is no as such direct evidence attributing instant offence against the accused-applicant. The whole evidence is of circumstantial in nature. The prosecution is mainly relying upon dying declaration of Akash. Upon its perusal, I believe it is very stereo type. There are certain element of doubt, which are rotating around said D.D., however they would be cleared at the time of trial. Naturally, the efficacy and value of dying declaration can be evaluated at the time of main trial. Ultimately, merely on the basis of dying declaration it cannot be inferred that instant application deserves rejection outrightly.

12. Apparently, there is memorandum vide section 27 of the Indian Evidence Act of the applicant-accused. As per prosecution, this is another incriminating evidence against him. Indeed, it seems from paper such statement is allegedly taken. According to applicant, he has never given any memorandum statement. Thus, there is *juxta* position about the same. The value of said evidence can be decided at the time of trial. It is not the stage to make any comment on it.

13. Combination of aforesaid scenario speaks in volume that there is no direct evidence incriminating instant accused in the alleged crime. Apparently the case is based upon dying declaration and other circumstantial evidence. It can be much evaluated and analyzed at the time of trial. *Prima facie* the nexus and the entire chain of circumstances

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and material hardly suggest the direct attribution of the accused in the alleged crime. However, it is subject matter of trial. On all above counts, I believe it is not desirable to junk instant application squarely.

14. At the moment, all weapons allegedly used in the crime are already recovered. There is no use of any dangerous weapon in the crime. The accused is duly interrogated and final charge-sheet is already filed. It is not the case of prosecution that there is element of further investigation, if any, in the crime. As such, there is no any specific reason put forth by the prosecution to disown bail relief to the accused. Was there any intention to kill the deceased and what is the efficacy of dying declaration is matter of trial. It is not the stage to pore over on merits or demerits of the case in hand.

15. Though the offence is grave and serious considering nature of evidence against instant accused, ***it would be just and proper to admit the applicant to bail, as a normal rule of criminal jurisprudence is bail and not the jail.*** As the final report in the crime has already been placed, so what is principally required to be seen is as to whether the applicant's presence can be procured during the trial of the case or not. The accused is permanent resident of Village Thalegaon, Dist. Yavatmal. He is having his roots therein. There are no likely chances that he would flee from justice. No such contingencies are raised by the prosecution mainly. This aspect is also found material for just decision of this application.

16. To add, now as such nothing is remained to investigate anymore and ***the accused /applicant is incarcerated for last 4 months.*** The alleged articles are already recovered. As of now nothing is left to be recovered or discovered at the instance of present accused. Presence of accused behind bar for any sort of custodial interrogation does not require for. The accused is ready to attend court regularly. The anxiety

expressed by the prosecution as regards repentance of crime is concerned, it can be taken care of by putting stringent condition upon the accused. The elements of further investigation are not shown by the prosecution. ***There are no past black antecedents at the credit of the applicant.*** More-so, ***it is not aptly shown by the prosecution that present accused by virtue of his status may tamper with any prosecution witnesses or evidence.*** The question of tampering would not arise as all the material witnesses belongs to the family of deceased only. If the accused applicant pressurize them they can very well approach the police or this court with liberty to cancel the bail conferred upon the accused applicant. The prosecution has not unfolded any potent objection to disown the accused with reliefs of bail. All these factors too enlarges the scope to release the applicant on bail under Section 439 of the Code of Criminal Procedure.

17. Indeed, it is well settled legal proposition, while dealing with regular bail application, is that the object of the bail is to secure appearance of the accused at the time of his trial by reasonable amount of bail. Its object is neither punitive nor preventive. Application of similar object and scanning instant application under same object is holding significance. A useful reference on the point can be made from the law guided by the Hon'ble Supreme Court in the Case of ***Sanjay Chandra V/s CBI reported in (2012 AIR(SC)830)***. In present case there are no special reasons put-forth before this court that may lead to raise exception to aforesaid object. In ***P. Chidambaram V/s Directorate Of Enforcement reported in (2020(13)SCC 791)*** the Hon'ble supreme Court repeatedly highlighted the proposition that Bail the rule and jail the exception. Recently while enlightening on the aspect of bail the Hon'ble Court expounded in loud manner in the case of ***Uttamsingh vs. State of Himachal Pradesh (2021 All MR (Cri) Journal 75)*** wherein it is held that the object of the bail is to secure the attendance of the

accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. In instant matter there is no such anxiety that the accused may flee from justice and remain absent for the trial.

18. Apogee of all above facts, foregoing peculiarities and factual scenario, speaks in clarion manner that the application needs to be allowed, however, by putting certain restrictions. There is no strong reason to disown bail relief to the accused. It is said that Bail is a rule and Jail is an exception. Likewise, in instant case when the investigation as regards these accused is concern is over by all means, so also when accused/applicant is committed to attend the I.O. & Court and follow terms and conditions, imposed if any, I believe there is no hurdle for bail. Ultimately, owing to foregoing peculiarities the application needs to be allowed, however, by putting certain conditions.

19. Conspectus of the circumstance manifested above leads me to pass the following order.

ORDER

1. Application is allowed.
2. The accused applicant– Sandip Uttamrao Wanjari, in connection with Crime No.994/2022 registered with Kalamb Police Station, District Yavatmal, for the offence punishable U/secs. 302, 307 of the Indian Penal Code, be released on **P.B. of Rs. 75,000/- with One solvent surety in the like amount**, on the following terms and conditions;

Conditions

- (i) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to any police officer.

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- (ii) The accused not to indulge in any illegal activities or in committing the offence of like nature.
- (iii) He shall co-operate in further investigation if any by attending the concerned Police Station as and when called by the I.O. on written notice. He shall also attend each and every date before trial court, failing which his bail shall be treated as cancelled without any further reference to this court.
- (iv) He shall not foster any interaction with the informant or with any of her relatives.
- (v) He shall produce verified copy of his Aadhaar Card, Contact Details and other Address Proofs.
- (vi) His surety shall produce verified copy of his / her Aadhaar Card, Contact Details, Copy of Bank Passbook and other Address Proofs.
- (vii) He shall not leave the jurisdiction of Yavatmal District *sans* prior permission of this court.

Date : 28/04/2023

(Amit Anant Laulkar)
Additional Sessions Judge,
Yavatmal.