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Sessions Case No.38/2022.
Nikesh. Vs State
(CNR No-MHYA-010007032022)

-: ORDER BELOW EXH-138 :-
(Delivered on this 19th Day of April 2023)

1. Accused/applicant Vishal Jadhav invoked jurisdiction of this court vide Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime No.587/2021 registered with Kalamb Police Station, Yavatmal, for the offence punishable U/secs. 302, 363, 364, 451 r/w 34, 120(B), 201 of the Indian Penal Code.

2. Afterwards filing the Final Report Vide Section 173 Of The Code Of Criminal Procedure, when the case was stand over for further deliberation, instant applicant moved this first bail application and implored for his release suitable bail.

Bonsai facts are as follows :-

3. Informant viz. Shalini Suresh Pawar hails from Village Tirasada, Tq. Kalamb. In the night of 15/11/2021, four unidentified persons trespassed into her house and kidnapped her husband forcibly. She resisted but all in vain. The informant rushed to the police station and reported said incident to the police. Accordingly, she set the investigation into motion and crime bearing No. 587/2021 for the offence P/U/S 451,363,364 r/w 34 of the Indian Penal Code was registered. Amid inquiries, Police found dead body of informant's husband with his mouth wrapped tightly by cloth in Wardha River. The body was identified by the informant. It was revealed in further investigation that few unidentified persons along-with accused applicant brutally murdered husband of the informant by entering into criminal conspiracy. They hatched the conspiracy and killed her husband in Ertiga Car so also they tried to dispose of his dead body by throwing corpus in Wardha River.

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Further statement of the informant was recorded. Offence punishable under section 302 r/w 120-B was added in the crime. Amid investigation, all accused including present applicant were arrested, interrogated and after initial Police custody remanded to Magisterial custody. The accused/applicant is in MCR from 22/11/2021 and so on till date.

4. *Per* accused/applicant, he is innocent and falsely implicated in the crime. He is nowhere concerned with the alleged felony. The bunch of *actus reus* posed against him are baseless. There is no iota of evidence revealing he is involved in the alleged crime. He is remanded to MCR. Till date he is behind the bar. Nothing is remained to recover or discover at the instance of this accused. Now Charge-sheet is filed and investigation is completed. As such physical custody of the accused is no more required for any custodial interrogation. The accused is merely arrested on the say of co-accused. It is further urged that, the accused/applicant is ready to abide by the terms and conditions if any imposed upon him. He is ready to cooperate in the trial. At the end, accused crave for his release on suitable bail.

5. *Refuting stance* the prosecution raised stiff objections for freeing of accused persons through their detail reply below Exh.140. According to them, offence leveled against accused are serious in nature. Present accused has played significant role in the offence whereby he is having common intention with other co-accused. He is part of the conspiracy and with their ill will they brutally killed informants husband. They have active involvement in the crime. On the count of recurrence as well as gravity of crime, prosecution prayed for rejection of the application in *limine*.

6. Heard learned advocate Mr.V.D.Darne for the accused applicant and learned PP Mrs. N.N. Dave for the prosecution at length. I have pore over entire proceeding keenly.

7. Scanned charge-sheet, other material as well as bail order of co-accused tendered on record minutely. A missing FIR has turned into a case of murder. The alleged conduct that the deceased was abducted from his house in the night hours and then was murdered in a running vehicle and thereafter his dead body was tried to be disposed of in *Wardha* River, is really brutal. Indeed, in present crime charge-sheet is placed before the court and now the trial is stand over for further due deliberation and consideration. Having scanned charge-sheet as well as other relevant papers it is crystalline that investigation as regards present accused is concerned is already over. ***Admittedly, co-accused Amol Nale and Ranjana Devkar are already released on bail by the Hon'ble Bombay High Court Bench at Nagpur, so also other accused Vijay Kuchankar, Kiran Akulwar, Mithun Uike, Ganesh Atram, Vishal Jadhav, are released by this court.*** It is urged by the prosecution that further investigation is going on in present crime, ***however till today, since filing of charge-sheet no progress or as such any element of further investigation is unfolded by the Investigating officer before this court.*** No progress in further investigation, if any, is revealed by the prosecution. The name of the accused has specifically *come in fore* during investigation. The role of applicant is not deeply mentioned in the FIR and there is no old rivalry of the applicant with the deceased and the applicant is the resident of Kelapur. Having seen FIR it appears that ***no specific role has been attributed towards the applicant.*** In present crime nothing is seized from the applicant/accused, ***there is no recovery at the instance of the applicant, so also there is no memorandum under section 27 of the Evidence Act from the applicant.*** In refereed crime informant is the main eyewitness, who identified the persons who kidnapped her husband but there is no identification of the applicant. ***The police hold the identification parade of the accused/applicant but the informant did not surely identify the applicant as the abductor.*** The linkage of alleged phone calls made *inter-se* co-accused and the

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applicant is shown as incriminating evidence by the prosecution. On that count, it is submitted by the applicant that the co-accused are friends and thus there was a phone talk in between them. On the basis of said call the applicant is indulged by the police in instant crime, but this itself is not sufficient. It is the only incriminating evidence against present accused. The truthfulness and efficacy of said evidence would be matter of merit. Upon perusal of material placed on record except above no other major role is attributed against him. **Thus, merely on the said evidence, it is not desirable to junk instant bail application outrightly.** His role is not *par* with co-accused like Sunil.

8. Pursuant to abetment and conspiracy is concerned it is a matter of merit. **It would not be worthy to go into the merit and demerits of the case at this stage.** Though the offence is grave and serious and nature of evidence against instant accused appears to be circumstantial, in the light of the fact that he has no prior enmity with the deceased, 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/applicant is permanent resident of Kelapur, Distt. Yavatmal. He is having his roots therein. **There are no likely chances that he would flee from the justice.** His family is dependent upon him. Having pore over entire material placed on record, considering the period the accused is behind the bar, so also the co-accused having likewise role, is already released on bail coupled with the peculiarities manifested above, I am of the opinion that the accused applicant would be admitted to the bail.

9. In addition, now as such nothing is remained to investigate anymore. The alleged articles are already recovered. As of now nothing

is left to be recovered or discovered at the instance of present accused. ***The accused /applicant is incarcerated for last 1 year 4 months.*** 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 prosecution has also 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.

10. 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

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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 remained absent for the trial.

11. 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. To sum up, I pass the following order.

ORDER

1. Application is allowed.
2. The accused applicant– Nikesh Raju Kuchankar, in connection with CR.No. 587/2021 registered with Kalamb Police Station, Dist. Yavatmal, be released on **P.B. of Rs. 50,000/- 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) 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.
- (iii) The accused not to indulge in any illegal activities or in committing the offence of like nature.
- (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 : 19/04/2023

(Amit Anant Laulkar)
Additional Sessions Judge,
Yavatmal.