

Ravi Shivnath Gaware,
Age 25 years, occ. Student,
R/o. Chandanzira Tq. & Dist. Jalna. ... **Applicant**

The State of Maharashtra ... Respondent.

CORAM : **SHAILESH P BRAHME, J.**
DATE : **01.04.2026**

Heard both sides.

3. The applicant is behind bars since 28.06.2024. Charge-sheet is filed on 23.09.2024. It is reported to the police by the father of the deceased Nadeem that on 27.06.2024 his son demanded Rs. 200/- and went away with two wheeler. The vehicle was returned by his friend Baba Yusuf Pathan, but the deceased did not come back. There was telephonic talk between informant and deceased at 8.50 p.m. In the midnight at 12.30 it was informed to the informant that his son was being killed near Atharva Hotel.

 $\frac{1}{4}$

enlarged on bail vide order dated 05.05.2025. It is submitted that transcript of CCTV footage would indicate the presence of the applicant with co-accused witness Baba Pathan and deceased Nadeem but that is not sufficient to attribute any overt act. It is further submitted that there is total absence of motive or *mens rea* to commit offence. The postmortem report does not support the prosecution theory and reveals missing link.

5. Per contra, learned A.P.P. points out the postmortem report and especially 23 injuries inflicted on the vital part of the body of deceased. It is stated to be very brutal murder committed by the applicant with the weapon seized during the course of investigation at his instance. It is further submitted that considering the nature of the injuries, it cannot be said that it is a homicidal death not amounting to murder or a case covered by exception to Section 100 of the Bharatiya Nyaya Sanhita,. It is submitted that the panchnama transcript would cogently establish the theory of last seen together. Only inference possible is that applicant is liable for commission of the offence.

6. I have gone through first information report, statement of Baba Pathan, Vijay-proprietor of Hotel Atharva and the transcript of CCTV footage. It transpires that applicant, co-accused Vitthal, witness Baba and deceased were friends. They used to go to hotel Atharva for consumption of liquor. No investigation is carried out for finding out the motive or *mens rea*. The material on record does not show that there was any dispute amongst them or any reason for both the accused to take such drastic step of eliminating the deceased.

7. I have considered the injuries which can be seen from postmortem report. Those are on vital part of the body. Those are deep injuries and caused with full force. Learned APP is right in contending that the weapon has not been used casually or there is no possibility to infer any exception as contemplated by Section 100 of B.N.S.

8. However, in the absence of any motive or *mens rea*, howsoever the

brutal attack may be, it would not be possible to hold the accused liable or to attribute anything to him. The last seen theory is tried to be established by statement of Vijay, Baba Pathan and the transcript of CCTV footage. The co-accused and the victim departed at about 20.58 a.m. on the fateful day. I am of the considered view that the case being founded on circumstantial evidence, heavy burden is cast upon the prosecution to bring on record all the circumstances and/or provide the missing link to connect the applicant to the commission of the offence. At this stage of the proceeding, this Court is inclined to give some benefit to the applicant for enlarging him on bail, on certain conditions.

9. The investigation papers do not throw light on one aspect of the matter that the deceased had taken Rs. 200/- from his father but when he met applicant there was interaction to infer that they had no money for liquor or food. Thereafter from hotel Atharva the parcel of liquor was collected. The investigation is silent as to whether they consumed food in the hotel or at any other place, after leaving the place. The postmortem report shows that the probable time of death was within four hours from the last meal. The stomach is stated to have partially digested food particles. The question is that if they had taken food at some places they were together or whether there was possibility of existence of any third person. This aspect of the matter will have to be gone into during the course of the trial.

10. The co-accused is released on bail by coordinate bench vide order dated 05.05.2025. I am not inclined to grant bail on the ground of parity because role attributable to the co-accused and the applicant is different. In the present case the weapon was being carried by the applicant. I find that carrying weapon would not be sufficient in the absence of any direct evidence. I, therefore, pass following order.

10. The Bail Application is allowed.

11. Applicant Ravi Shivnath Gaware shall be released on bail in connection with Crime No. 274/2024 registered with Chandanzira Police Station, Dist. Jalna, for the offences punishable under Section 302 read with Section 34 of Indian Penal Code on following conditions:

(a) The applicant shall furnish P.R. bond of Rs. 50,000/- (Rs. Fifty Thousand only) with one or more solvent surety of like amount.

(b) The applicant shall not tamper with prosecution evidence or contact with the prosecution witnesses.

(c) The applicant shall furnish his address and mobile/cell number and address to the investigating officer.

(d) The applicant shall not change his address without informing the investigating officer.

(d) The applicant shall not enter entire Jalna district till conclusion of trial, save and except for attending the trial.

(e) The applicant shall punctually attend the proceedings and cooperate for expeditious disposal of the case.

(f) The applicant shall surrender his Aadhar card and PAN Card.

(g) Needless to mention that the observations made in this order are *prima facie* in nature.

12. Bail application is disposed of.

(SHAILESH P. BRAHME, J.)

mkd/-