

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 446 OF 2021**

Bhagyalakshmi Sudarshan Patnaik ...Appellant

Versus

The State of Maharashtra and anr. ...Respondents

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Mr. Yogesh C. Naidu a/w Mr. S. Gada i/b Ms. Kokila Kalra for the Appellant.

Ms. M.M. Deshmukh, APP for the State.

Mr. K.Y. Khadke, Nerul P.S. Navi Mumbai Present.

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CORAM : N.R. BORKAR, J.

DATED : 19 SEPTEMBER 2022

P.C. :-

This Appeal is filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC/ST Act") against an order passed by the Sessions Judge, Thane dated 28 April 2021 in Criminal Bail Application No. 1403 of 2021.

2. By the order impugned, the trial Court rejected the anticipatory bail application filed by the present Appellant, who is accused in C.R. No. 156 of 2021 registered at Nerul Police Station for the offences punishable under Section 500 of the Indian Penal Code and under Sections 3(1)(r) of the SC/ST Act.

3. On 24 May 2021, this Court passed the following order:

“1 Issue notice to the Respondent/Non applicant, returnable on 12th July 2021. Learned APP waives service of notice on behalf of the State.

2. Heard Mr. Naidu, learned Counsel for the Appellant. The complainant though not present or represented, objected the prayer for grant of bail.

3. The appellant appears to be the Class Teacher of the daughter of the complainant. It is the case of the Appellant, in the Whatsapp group of the students of her class, by mistake she has posted a wrong message about payment of outstanding fees, which has been adversely taken by the complainant. It is the case of the complainant that posting of such message on Whatsapp group, has defamed the child so also the parents, which act amounts to an offence punishable under Sections 3(1)(r) of the Scheduled Caste and Scheduled Tribes (Prevention) of Atrocities Act and Section 500 of Indian Penal Code.

4. Shri Naidu, learned counsel for the appellant would urge that the message on the Whatsapp group of the students of which she is a Class Teacher was never intend to bring any defamation or cause any offence under the Atrocities Act against the complainant or her daughter. According to Mr. Naidu, posting of pdf file about the outstanding dues towards the fees was an inadvertent mistake, which was duly corrected at the earliest after having notice about the same by deleting the same from the Whatsapp group. According to Mr. Naidu, the appellant so also the Head Mistress have tendered their apology to the complainant and it was never their intention to commit any offence under the Atrocities Act, muchless under the Indian Penal Code for the act of defamation, as according to him, the act alleged against the appellant, which was in the form of bonafide mistake does not refer to caste of the complainant or any such material, which could form the basis for registration of an offence.

5. Learned APP submits that the offence is based on the message which was posted by the appellant in pdf form and since such message was viewed by the students/ their parents whose mobile phone was used for attending the classes through group on Whatsapp, the ingredients of the

offences alleged are satisfied. According to him, he needs to take instructions in the matter.

6. Considered the aforesaid submissions.

7. The complainant, Non applicant No.2's daughter is studying in a School of which the appellant is the Class-Teacher. The appellant has admitted posting of a message by mistake, which is formed to be a basis for registration of an offence. The message was immediately deleted by the Appellant, when it was brought to her notice and has already tendered apology. The Head Mistress has also tendered apology to the complainant on the aforesaid issue.

8. Apart from above, the message nowhere refers to the caste of the complainant or her daughter so as to prima facie infer that the appellant had any intention to commit an offence under the provisions of Atrocities Act. The prima facie reading of the contents of the F.I.R. and other material brought on record primarily depicts that the necessary ingredients for the offences under Sections 3(2)(r) of the Atrocities Act particularly keeping in mind the mens-rea cannot be inferred.

9. The appellant is a Teacher and has no criminal antecedents.

10. In that view of the matter, the case for grant of ad-interim protection is made out. Hence, the following order is passed :

ORDER

(i) In the event of arrest of the Appellant in C.R. No. 156 of 2021, registered with Nerul Police Station (Navi Mumbai), for the offence punishable under Section 500 of Indian Penal Code and under Sections 3(1)(r), of Scheduled Caste and Scheduled Tribe (Prevention) of Atrocities Act, she be released on bail on her executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount;

(ii) The appellant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of eight weeks.

(iii) The appellant shall attend Nerul Police Station, as and when directed by the Investigating Officer.

(iv) The appellant shall furnish her contact details and permanent address of residence to the Investigating Officer within three days from today.

(v) The appellant shall not try to influence the

prosecution witnesses or tamper with the evidence.”

4. The learned APP on instructions submits that the State has filed ‘B’ Summary.
5. The learned Counsel for the Appellant submits that the said Summary is yet to be accepted by the concerned Court.
6. Considering the facts and circumstances, liberty is granted to the Appellant to take appropriate steps, if ‘B’ Summary submitted by the Investigating Officer is not accepted by the concerned Court. To enable the Appellants to take appropriate steps the interim order passed by this Court dated 24 May 2021 shall continue to operate till the decision on ‘B’ Summary and in the event ‘B’ Summary is not accepted, then for further period of three weeks from the date of passing of such order by the concerned Court.
7. The Criminal Appeal is disposed of in aforesaid terms.

(N.R. BORKAR, J.)