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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRI. APPEAL NO. 880 OF 2019**

Gautam Kishore Mulchandani

... Appellant.

*Versus*

The State of Maharashtra & Anr.

... Respondents.

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Mr. Vijaykumar R. Garad, Advocate for the Appellant.

Mr. S. R. Agarkar, APP for the State-Respondent No.1.

None for Respondent No.2.

PSI -Mr. Nivas M. Shinde, Police Sub-Inspector, Nerul Police Station, Navi Mumbai is present.

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**CORAM : SARANG V. KOTWAL,J.  
DATE : NOVEMBER 24, 2022.**

**P.C. :-**

1. The Appellant has challenged the order dated 29<sup>th</sup> May 2019 passed by the Additional Sessions Judge, Thane in Anticipatory Bail Application No. 1331 of 2019. In effect, the appellant is seeking anticipatory bail in connection with Crime No. I-176 of 2019 registered at Nerul Police Station, Navi Mumbai under section 153 A of the Indian Penal Code and under section 3 (1)(t),(u),(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act , 1989.

2. The FIR is lodged by the respondent no. 2, who is Advocate by profession. According to him, he belongs to Scheduled Caste. On 18<sup>th</sup> April, 2019 his friend forwarded a morphed photograph on his whatsapp number. The morphed photograph was highly objectionable. I do not find it proper to describe the photograph in this order. Suffice it to say that the photograph was in bad taste and extremely offensive. The first informant made inquiries and according to him the appellant had uploaded that photograph. This act was an offence under section 153 of the Indian Penal Code and under section 3(1)(t)(u)(v) of the Atrocities Act.

3. The learned counsel for the appellant submitted that the appellant has not morphed the photograph. He has merely downloaded that photograph on the facebook and has uploaded it on the whatsapp group. According to the learned counsel, therefore, no offence is committed by the appellant.

4. The learned APP strongly opposed this appeal. Nobody appears on behalf of respondent no.2.

5. Learned APP produced the papers of investigation before me. The papers produced includes the statement of one Khadke. He has started the whatsapp group on which this photograph was shared. The appellant had also posted the photograph with two comments. After this, there was exchange of abusive comments between the members. This witness then asked the Appellate to delete that post. However, the appellant expressed his inability to delete that post.

6. There is material against the appellant that he had shared that photograph on whatsapp group. There were many members. This act would definitely attract the applied provisions of the Indian Penal Code as well as the Atrocities Act. The offence is serious. This is certainly not a case for grant of anticipatory bail.

7. At this stage there is sufficient material to show that the appellant has committed a serious offence. Therefore, I am not inclined to grant anticipatory bail in this case. In addition, the bar under section 18 of the Atrocities Act also operates which is one more reason why anticipatory bail cannot be granted to the

appellant.

8. Therefore, the Appeal is rejected. Considering the gravity of the offence and bar under section 18 of the Atrocities Act, further protection cannot be granted.

9. Before parting with the order it is necessary to issue certain directions to the Office because that the objectionable material is annexed to this Appeal at Exhibit "B". The Office shall remove Exh. "B" of this Appeal and keep those pages in a sealed envelope with the record of this case.

10. With this direction, the Appeal is disposed of.

**(SARANG V. KOTWAL, J.)**

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