

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

CRIMINAL APPEAL NO. 345 OF 2024

Nitin Balkrushna Mhatre }**Appellant**

: Versus :

The State of Maharashtra & Anr. }**Respondents**

Mr. Karansingh Rajput i/by. *Mr. Satish Raut, for the Petitioner.*

Ms. Shilpa K. Gajare-Dhumal, APP for Respondent No.1-State.

Mr. Aniket Nikam i/by. Mr. Amit Icham, for Respondent No.2.

PSI, Mr. Ghadge, Pen Police Station present.

CORAM : SANDEEP V. MARNE, J.

Dated : 27 August 2024.

P.C. :

1) This is an Appeal under Section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**S.C.S.T. Act**) challenging the order dated 16 February 2024 passed by the Additional Sessions Judge, Raigad Alibaug rejecting the application for pre-arrest bail in connection with C.R. No.23/2024 registered with Pen Police Station for the offences punishable under Sections 354-D, 506, 504, 500, 385 of the Indian Penal Code (**IPC**) and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the S.C.S.T. Act.

2) I have heard Mr. Rajput, the learned counsel appearing for the Appellant, Ms. Gajare-Dhumal, learned APP appearing for State-Respondent No.1 and Mr. Nikam, learned counsel appearing for Respondent No.2.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Complainant was posted as 'Gram Sevak' in Valvali Gram Panchayat and the Gram Panchayat had apparently issued tax assessment in respect of the house constructed by Chandrakant Pandurang Mhatre. However instead of mentioning the correct Survey No.97/5, the Complainant mentioned erroneous Survey No.98/5 in the said tax assessment. It appears that the land at Survey No.98/5 belongs to the Appellant and his sister, Sakshi. The Appellant was following up with the Gram Panchayat for correction of the survey number in the tax assessment. The FIR statement, *prima-facie* indicates that the entire interaction between the Appellant and the Complainant has taken place on account of erroneous reflection of survey number in the tax assessment sheet of Chandrakant Pandurang Mhatre. It appears that ultimately the mistake was corrected and in the monthly meeting of Gram Panchayat held on 20 January 2024, the tax assessment on Appellant's land bearing Survey No.97/5 was finally cancelled.

4) It is the contention of the Complainant that the Appellant was repeatedly contacting her and was abusing and threatening her. However, what is relevant to note is that the interaction between the duo was essentially relating to official duties of the Complainant about the erroneous tax assessment of Appellant's land. Except the interaction for official purposes, the FIR statement does not reflect any additional private interaction between the Complainant and the Appellant. The learned counsel appearing for the Appellant has relied upon statement officially issued by the Complainant on 31 January 2024 admitting her mistake of reflecting erroneous survey number in the tax assessment of Chandrakant Pandurang Mhatre. Though the said statement is dated 31 January 2024, the Complainant has stated in the FIR that the said writing was forcibly taken by the Appellant on 1 February 2024. The statement dated 31 January 2024 is type written and bears stamp of Gram Sevak of the Gram Panchayat and it is *prima-facie* difficult to believe that the Complainant can be forced to issue the said statement. The next interactions between the duo allegedly occurred on 7 February 2024 and 8 February 2024. On 7 February 2024, a telephonic conversation allegedly occurred in which there are no caste based utterances. On 8 February 2024, the Complainant alleges that the Appellant entered the office of Gram Panchayat and demanded various documents for taking pictures and at that time, the Appellant allegedly made caste based utterances towards her. However,

the Statement does not indicate that such utterances, though made at a public place, have taken place in public view. Again, *prima-facie* it does not appear that the said utterances were intended to humiliate the Complainant's caste.

5) The allegation with regard to the act of the Appellant in posting pictures of the Complainant on WhatsApp group with messages alleging demand of illegal gratification by Complainant, for which offence under Section 500 of the Indian Penal Code is included, which is bailable.

6) All the IPC offences included in the FIR, are bailable. However, according to Mr. Nikam, Section 3(2)(va) is also included in the FIR since the Appellant is accused of commission of scheduled offences which do not require the condition of public view.

7) *Prima-facie*, it does not appear that the interactions between the Appellant and the Complainant was for the purpose of fostering any personal relation or that the Appellant insisted on interactions with the Complainant despite showing disinclination by her. The interaction was clearly with regard to the the performance of official duties by public servant to whom the Appellant was entitled to contact. *Prima-facie*, therefore it cannot be said at this stage that the scheduled

offences under the IPC are made out for the purpose of application of bar under Section 18 of the S.C.S.T. Act.

8) Both, Ms. Gajare-Dhumal, as well as Mr. Nikam have highlighted two antecedents of the Appellant. However, Mr. Rajput has clarified that the allegations in respect of one of the FIRs involve consensual relationship between the Appellant's friend with a minor, who apparently took shelter in the house of the Appellant. That the allegations have been subsequently withdrawn by the victim in the statement recorded under Section 164 of the Criminal Procedure Code. The other antecedent relate to the year 2018 and involves offence of Section 420 of the Indian Penal Code. It is therefore difficult to brand the Appellant as a history sheeter for denying anticipatory bail.

9) The Appellant is on interim protection granted by this Court on 4 April 2024. It is sought to be contended that the Appellant is not cooperating with completion of investigation and has not handed over his mobile phone on which the concerned WhatsApp messages are circulated. However, after going through the records placed on record by the learned APP, it does not appear that the concerned WhatsApp messages and photographs which would also be present on the mobile phone of the Complainant form part of those records. Be that as it may, the Appellant can be once

again directed to remain present in the Police Station for the purpose of completion of investigations and the same cannot be a ground for not making the interim protection absolute. The custodial interrogation of the Appellant, to my mind, appears to be unnecessary in the facts and circumstances of the case.

10) The Appeal accordingly succeeds and I proceed to pass the following order :

- (i) Order dated 16 February 2024 passed by the Additional Sessions Judge, Raigad Alibaug is set aside.
- (ii) Interim protection granted in favour of the Appellant on 4 April 2024 is made absolute.
- (iii) Appellant shall report to the Investigating Officer of Pen Police Station on 28 and 29 August 2024 between 11 to 1 p.m. and shall co-operate in investigation by handing over his mobile phone from which the concerned WhatsApp messages are allegedly circulated.
- (iv) The Appellant shall not contact the Complainant and/or any other witnesses associated with the case in any manner or tamper with the evidence. The Appellant shall also not enter the office of Grampanchayat till Complainant remains posted there.
- (v) The Appellant shall not circulate any messages on any media relating to the Complainant

(vi) The Appellant shall attend each date before the Trial Court unless exempted.

11) With the above directions, the Appeal is **allowed and disposed of.**

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[SANDEEP V. MARNE, J.]