

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6684 OF 2025

Khadeejah Shahabuddin Shaikh
Versus
State of Maharashtra & Ors.

....Petitioner
....Respondents

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.598 OF 2025**

Khadeejah Shahabuddin Shaikh
Versus
State of Maharashtra

....Applicant
....Respondent

Ms Farhana Shah a/w. Mr. Amin Solkar, Senior Counsel and Intern
Omkar Shah, for Petitioner/Applicant in both matters.

Mr. Nitin Dhumal, for Respondent Nos.2 & 3 in Writ Petition No.6684
of 2025.

Mr. Ashok Gawai, AGP for State in Criminal Application No.598 of
2025.

Mr. P. P. Kakade Addl G.P. a/w Mr. P. V. Nelson Rajan, AGP for
Respondent No. 1-State

**CORAM : GAURI GODSE &
SOMASEKHAR SUNDARESAN, JJ.**

**DATE : MAY 27, 2025
(VACATION COURT)**

ORDER:

1. This is an absolutely shocking case where a 19-year old student has been arrested and detained in police custody

pursuant to an FIR lodged against her by a police constable who claims to have been on patrolling duty in the concerned area. The Civil Writ Petition is filed seeking permission to appear for the Semester IV Exams scheduled between 24th May 2025 and 3rd June 2025. Unfortunately, the Petitioner missed appearing for the exams scheduled on 24th May 2025 and 27th May 2025, as she was in custody and was rusticated. However, the next three papers are scheduled on 29th May 2025, 31st May 2025 and 3rd June 2025.

2. The Criminal Application is not on the Board and is taken on the production board. The Criminal Application is filed under Section 528 of the Bharatiya Nagrik Suraksha Sanhita 2023 (BNSS), praying to quash the FIR lodged against the Petitioner. The Petitioner has also prayed for an interim relief for her release forthwith. The FIR is lodged for the alleged offences punishable under Sections 152, 196, 197, 299, 352 and 353 of Bharatiya Nyaya Sanhita, 2023 (BNS). The allegation against the Petitioner is that she had shared a post on her Instagram account on 7th May 2025 regarding the war between Bharat and Pakistan, which has allegedly caused tension between the two different religions and is likely to adversely affect public peace.

3. There is no dispute that immediately within two hours, the petitioner deleted the post and she publicly expressed remorse and tendered an apology. The extract of the post expressing remorse and tendering an apology has been placed on record in the Petition (Page 37 to 42 of the Civil Writ Petition). According to us, it is thus shocking that after she deleted the post, the FIR was lodged against her on 9th May 2025. Without even considering the factual aspect of deleting the post and tendering an apology, the concerned Investigating Officer has taken the Petitioner into custody. Considering that the Petitioner had immediately expressed remorse and deleted the post, and also expressed apology, we do not see any reason why the Petitioner was taken into custody.

4. The Petitioner is pursuing a Bachelor of Engineering in Information Technology from Sinhagad Academy of Engineering and is currently in Semester IV. The institute is affiliated with the Savitribai Phule Pune University. There are no antecedents against the Petitioner. Considering the allegations against her and her immediate act of deleting the post and expressing remorse and tendering an apology, in our opinion, at the most, her act of sharing the post can be termed as an

indiscretion by a young student still taking education. Yet, the Sinhagad Academy of Engineering rusticated the petitioner

5. Learned Counsel for the Petitioner submits that the Petitioner was unable to appear for the exams, which were scheduled on 24th May 2025 and 27th May 2025, only because she was in custody and was rusticated. She therefore submits that the Petitioner be permitted to appear for the two missed exams as a special case. Learned Counsel for the institution submits that since the University conducts the exams, the institution will not be able to take that decision independently. In any case, the university is not made a party Respondent in this Petition. Therefore, so far as the permission to appear for the missed examination is concerned, we are unable to issue any such directions at this stage. However, the Petitioner would be at liberty to amend the Petition and seek appropriate relief or adopt any other procedure that can enable her to seek permission to appear for the exams that she has missed. If any such application is made, the same shall be considered on its own merits.

6. So far as the Criminal Application is concerned, we find substance in the submissions made on behalf of the Applicant. This is

not a case where the Applicant would be required to remain in judicial custody. We see no reason to detain the petitioner in custody.

7. So far as the Writ Petition challenging the order of rustication is concerned, *prima facie*, we find that the order of rustication is hurriedly issued without giving an adequate opportunity to the Applicant to respond to any such proposed action appropriately. The order of rustication completely ignores the act of the Applicant in deleting the post, expressing remorse, and tendering an apology. Hence, we find that the order of rustication is required to be suspended.

8. Learned APP submits that he has instructions to oppose the grant of any such relief to release the Applicant. However, he has no reason to oppose the grant of release of the Applicant. Considering that the Applicant is a student and is required to attend her examination day after tomorrow, i.e. 29th May 2025, we find it appropriate that the Applicant be released forthwith. Therefore, the Learned APP shall intimate this order through telephone to the concerned Jail Authorities and instruct them to act on the order that will be forwarded to the Jail Authorities by e-mail.

9. In view of the aforesaid *prima facie* observations, we pass the following order :-

A] The Applicant shall be forthwith released on bail by the concerned Jail Authorities of the Yerawada Central Prison. It is clarified that the Applicant shall be released by this evening.

B] The concerned Superintendent or any other officer in charge of the concerned prison is directed to ensure that the Applicant is released **today evening** to enable the Applicant to get adequate time to prepare herself for the examination, which she is required to attend.

C] The Applicant shall attend the concerned police station as and when called and cooperate with the Investigation. However, it is clarified that during the period of examination, she should not be called to the police station.

D] The Applicant shall not leave the State of Maharashtra without taking leave of this Court.

E] Considering the apprehension expressed by the Learned Counsel for the Applicant and the reaction on social media, we find it appropriate that the police shall ensure that the Applicant is given adequate police protection for appearing at the examination, as required.

F] Pending the Petition, the order of rustication issued on 9th May 2025, by Respondent No.3 shall remain suspended and the Applicant shall be permitted to appear for her examination as scheduled.

G] Respondent No.3 shall ensure that all the processes, including issuing the hall ticket, shall be provided to the Petitioner to enable her to appear for the examination. If necessary, to provide security to the Applicant, the Respondent No.3 is at liberty to arrange a separate classroom to enable the Applicant to appear for the examination.

10. The Respondent Nos.2 and 3 are at liberty to file their affidavit in reply to support the order of rustication. If any such reply is filed, the same shall be served upon the Learned Advocate for the Applicant.

11. In the event, there is any issue to upload this order considering the technical issues faced by this Court since yesterday, all concerned shall act on the copy of this order duly authenticated by the Court Sheristedar or the Personal Secretary.

12. List for reporting compliance on **29th May, 2025**.

[SOMASEKHAR SUNDARESAN,J.]

[GAURI GODSE, J.]