

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 25975 OF 2021
IN
SUIT (L) NO. 25974 OF 2021

Dhyandev Kachruji Wankhede

... Plaintiff/Applicant

V/s.

Nawab Malik

... Defendant

Mr.Arshad Shaikh, Senior Advocate with Mr. Divakar Rai, Mr. R. S. Rane, Ms.Bhavika Solanki, Mr.Nitin Rai i/b Saurabh Tamhankar for the Plaintiff/Applicant.

Mr.Atul Damle, Senior Advocate with Mr.Ramesh Dube Patil, Kunal Damle, Rajesh Tekale, Ashish Gaikwad, Anandrao Kate, Rushikesh Sable and Komal Bhoir, i/b Jay & Co. for the Defendant.

CORAM : MADHAV J. JAMDAR, J.

RESERVED ON : 12th /17th NOVEMBER, 2021

PRONOUNCED ON : 21st NOVEMBER, 2021

ORAL ORDER:

Heard Mr. Arshad Shaikh, learned Senior Counsel for the Plaintiff and Mr. Atul Damle, learned Senior Counsel for the Defendant.

2. At the outset Mr. Shaikh, the learned Senior Counsel appearing for the Plaintiff clarified that at this stage the Plaintiff is only pressing for ad-interim relief in terms of prayer clause 5 (c) of the Interim Application. The said prayer clause 5(c) is reproduced herein below for ready reference :-

“(c) Pending the hearing and final disposal of the present Interim Application, this Hon’ble Court be pleased to pass an order of injunction preventing and / or restraining the Defendant, his agents, servants, authorized representatives, his party members and all others acting under and on his instructions from publishing, writing, speaking in any media, including electronic media and the social media handles, or publishing in any manner whatsoever any content / material which is defamatory about the Plaintiff and / or his family members.”

3. Before considering the rival submissions it will be necessary to set out the pleadings of the parties. The Plaintiff’s case as set out in the plaint is as follows:-

- (a) The Plaintiff is retired Government official and was working as Senior Police Inspector of State Excise Department at the time of his retirement in 2007.
- (b) The Plaintiff’s family comprises of (i) daughter – Mrs. Yasmeen Aziz Khan nee Miss Yasmeen Dhyandev Wankhede, who is an Advocate by profession practising at various courts in Mumbai; (ii) son - Mr.Sameer Wankhede, who is presently posted as the

Zonal Director of the Narcotics Control Bureau, Government of India and (iii) his daughter-in-law – Mrs. Kranti Sameer Wankhede nee Miss Kranti Redkar is a film actress.

- (c) Defendant is an Indian politician affiliated to Nationalist Congress Party (NCP) and who is the current Cabinet Minister of State of Maharashtra, Minority Development, Aukaf, Skill Development and Entrepreneurship. The Defendant is the National Spokesperson and Mumbai President of NCP. The Defendant is active in news and media on and through his twitter account, viz. “Nawab Malik @nawabmalikncp”.
- (d) It is the case of the Plaintiff that the interviews / press conferences given by the Defendant to various news channels and the posts uploaded by him on his social media accounts, including the said Twitter Account, are highly defamatory, slanderous as well as libellous, as it contains incorrect facts and conclusions, communicates misinformation and incomplete information, and is a deliberate, calculated move on the Defendant’s part to knowingly and maliciously defame, inter alia, the Plaintiff and / or his family members, causing him and his other family members, as mentioned above, not only an incalculable loss, harm and damage to their reputation at large but ex-

facie impairs their right to live with human dignity.

- (e) In paragraph 6 of the plaint, the Plaintiff has set out following tweets/ social media contents etc. which according to Plaintiff are defamatory:-
- (i) Fletcher Patel seen in this picture, with someone who he calls 'My Lady Don'. Who is this 'Lady Don'?
 - (ii) Ugahi ka dhandha Maldive me!
 - (iii) Here are the proofs!
 - (iv) Sameer Wankhede has accepted the fact that he had visited Maldives but he denies the visit to Dubai. Here is the proof of his visit to Dubai with his sister. Sameer Wankhede was at Grand Hyatt Hotel in Dubai on 10th December 2020. His lie stands exposed.
 - (v) Pehchan kaon?
 - (vi) Sameer Dawood Wankhede ka yaha se shuru hua farjiwada.
 - (vii) Who is this Wankhede Dawood?
 - (viii) Photo of a Sweet Couple Sameer Dawood Wankhede and Dr. Shabana Qureshi.
 - (ix) This is the 'Nikah Nama' of the first marriage of 'Sameer Dawood Wankhede' with Dr. Shabana Quraishi.
 - (x) Who is this person? What is his relation with Dawood Wankhede and Sameer Dawood Wankhede ? Please let us know.

(xi) ...He farzi certificate chya aadharavar yanna nokari milali nasati tar hotkaru ek gareeb dalit porga kinva porgi ti ya padavar basali asti...

...Sameer Wankhede ne toh dharma parivartan nahi liya hum maan te hai kyun ki janam se who musalman hai.

Unke pitashree ne dharma partivartan kiya tha. Dono bachche bachpan se musalman hai...

(xii) Screenshot of the whatsapp chat between Yasmeen Dawood Wankhede (sister of NCB official Sameer Dawood Wankhede) and a drug peddler.

Question arises, is this morally, ethically and legally right?

(xiii) ...Aur aaj main phir kayam hoon apni baat pe. Jis tarah se farziwada karke certificate Sameer Dawood Wankhede ne banaya, us ski quasi-judicial authority Maharashtra ke Zilla Adhikari yaha se Mumbai Shahar se certificate jaari hua... Humein pura vishwas hai ki joh farziwada hua hai, uss farziwadape jaanch ke baad mohar lagegi..

(f) In paragraph 8(b) of the plaint it is contended by the Plaintiff that in the course of his duties as an officer of the Narcotics Control Bureau (NCB), the Plaintiff's son was, and even today is, actively involved in busting drug rackets. In the said process, he has

arrested various criminals associated with the drugs, including but not limited to drug suppliers and drug addicts-consumers. His son has recently cracked various cases in which relatives of various politicians and Bollywood personalities were arrested. In a nutshell, the Plaintiff's son was, and even today is, handling various "high-profile" drugs-related (NDPS) cases. One of such case being handled by the Plaintiff's son was of one Mr.Sameer Khan, the Defendant's son-in-law, who was also arrested under various offences punishable under several sections of the NDPS Act, 1985. Said Mr.Sameer Khan was arrested on 13/01/2021 by the NCB in connection with the drug case. He was released on bail on 27/09/2021, i.e. almost after 8 months in prison.

(g) Since lodging of said case against the Defendant's son-in-law, the Defendant has been hounding the Plaintiff's son satisfying his personal vendetta with extortive and provoking threats, in public and also on national televisions, to the Plaintiff's son with malafide aim to pressurise him to succumb to his high-handed political tactics so that the Plaintiff's son would not efficiently and efficaciously do what he was supposed to legally do and for what he was (is) known for.

(h) It is specifically contended by the Plaintiff that to the

best of his knowledge and belief, his son did not slack-off anywhere and had done his job well. It is further contended that the Defendant's motive is to malign and disrepute Mr.Sameer Wankhede to ultimately sub-serve his claim in the Defendant's son-in-laws's case by discrediting the work of Mr.Sameer Wankhede and the NCB. It is further contended that it is apparent that all such remarks seem to be nothing but pressure tactics and attempt to induce fear in the Plaintiff's son's mind to derail the investigation being carried out by the Narcotics Control Bureaus, of which the Plaintiff's son is a proud and honest part of, at the cost of maligning not only the Plaintiff's son's but also the Plaintiff and his other family members' image and societal status.

- (i) In the circumstances set out in the plaint, the Plaintiff issued notice dated 29/10/2021 calling upon the Defendant to not to resort to such arm-twisting, high-handed tactics thereby tarnishing the name, reputation, social image and character of the Plaintiff and his family members.
- (j) It is contended that the defamatory statements, as mentioned above, have not only lowered the Plaintiff and his family in the estimation of right thinking members of the society, generally including peers and relatives, amongst whom the Plaintiff's reputation

which was painstakingly built over a period of years is now looked down upon and questioned. It is stated that while clearly the allegations levelled by the Defendant are false and malicious, a large section of the society within which the Defendant and his family resides is of the general view that there is no smoke without a fire. The Plaintiff further states and submits that in his zeal to aid his son-in-law, the Defendant has gone to the extent of tarnishing the image of everyone connected to Mr. Sameer Wankhede, i.e. the Plaintiff's son, relying on the fact that being a Member of the Legislative Assembly, he (the Defendant) can reach a wide audience and would be in a position to influence a large number of people.

- (k) It is submitted that had the Defendant bonafide got knowledge of any illegalities committed by the family of Mr. Sameer Wankhede, the Plaintiff or the Plaintiff's family, it was always open for the Defendant to have initiated such actions as are permissible in law for redressal, if he so desired. The Defendant can never justify tarnishing the image of the Plaintiff and his family in public as set out herein above.
- (l) By taking above and other contentions the Plaintiff filed the suit seeking declaration that Defendant's remarks which are mentioned in Para 6 of the plaint and/or any other remarks, insinuations and/or

imputations, whether in writing or oral, stated by him during the press releases and/or interviews or uploaded on his social media handles, including but not limited onto his Twitter Account, viz. 'Nawab Malik (@nawabmalikncp) and his family members are tortious and defamatory in nature. The Plaintiff has also sought permanent injunction preventing and/or restraining the impugned actions and for deletion and/or removal of all articles, tweets interviews, press release and sought compensation of Rs.1,25,00,000/- (Rs. One Crore Twenty Five Lakhs only)

4. The Plaintiff has taken out above Interim Application in the suit seeking various reliefs. However, as set out hereinabove the Plaintiff at this stage is only pressing prayer clause 5(c).

5. The Defendant has filed Affidavit-in-reply dated 09/11/2021 to the Interim Application. It is specifically clarified that the said reply is filed only for the limited purpose of dealing with Plaintiff's ad-interim relief and leave to file detailed reply is sought. The Defendant has raised following contentions in the said Affidavit-in-Reply:-

- (a) The Plaintiff has filed present suit claiming alleged defamation of the Plaintiff and his family members. The Plaintiff has sought the relief of declaration and injunction against the Defendant and in favour of the Plaintiff and his family members. Therefore, the

Plaintiff has filed the present suit on behalf of his family members in a representative capacity. In the circumstances, it was incumbent upon the Plaintiff to comply with the provision of Order 1 Rule 8 of the Civil Procedure Code, 1908 (C.P.C.).

- (b) Family members of the Plaintiff have not initiated any legal proceedings controverting the evidence produced by the Defendant.
- (c) The family members of the Plaintiff, being adult members and particularly in view of the fact that the Plaintiff has alleged that the defamatory material is published against the family members of the Plaintiff, should have initiated independent legal proceedings for defending their civil rights, if it is so infringed as alleged by the Plaintiff.
- (d) The Plaintiff cannot file a representative suit on behalf of his family members without first seeking permission from this Hon'ble Court.
- (e) Defendant has produced several documentary evidence in support of his claims. The authenticity and the admissibility of the evidences produced by the Defendant can be decided only at the stage of trial. As far as the Ad-interim relief at present stage is concerned, the Defendant has produced substantial

evidence to support his claim.

- (f) Plaintiff has not produced a single documentary evidence thereby controverting the documentary evidence produced by the Defendant.
- (g) The Defendant has produced the birth certificate of Sameer Wankhede, son of the Plaintiff. The same has been produced to show that said Sameer Wankhede is Muslim by birth and that he has secured a Government job by falsely claiming to be from Schedule Caste. The said issue is now being investigated by appropriate authority. The said birth certificate is issued by Municipal Corporation of Greater Mumbai. In the said certificate the name of the father of said Sameer Wankhede is shown to be Dawood Wankhede and the caste is shown to be Muslim.
- (h) If the said birth certificate issued by the MCGM is false, then it is for the Plaintiff or said Sameer Wankhede to take corrective steps and pursue it with MCGM. If according to the Plaintiff said birth certificate is false, then the Plaintiff should have produced the correct birth certificate.
- (i) Plaintiff has failed to show as to how the statements and remarks made by the Defendant are derogatory or

defamatory of Plaintiff nor has made any specific denial of the truthfulness of the statements and averments made by the Defendant.

- (j) The defence of the Defendant squarely falls within the first, second, third and ninth exception to Section 499 of Indian Penal Code, 1860.
- (k) The evidence produced by the Defendant has helped the Government machinery to take corrective steps against Sameer Wankhede, son of the Plaintiff. As per the newspaper reports, Sameer Wankhede is facing vigilance inquiry and that the Director of Narcotics Control Bureau has transferred total of six cases from Mumbai Unit headed by Zonal Director Sameer Wankhede to its operation unit in Delhi.
- (l) Said Sameer Wankhede has also filed a Criminal Writ Petition before this Hon'ble court thereby seeking protection against vigilance issues related to NCB Cr. 94/2021 or any other issue. Thus, initiation of action against Sameer Wankhede shows the authenticity of evidence produced by the Defendant.
- (m) One of the punch witness, Prabhakar Raghoji Sail, involved as a punch witness in arrest of Aryan Khan has filed an affidavit stating that Sameer Wankhede will have to be paid money out of money extorted as a

bribe in connection to the Aryan Khan case and has further claimed that he was made to sign 10 blank papers as a punch witness. The said allegations are now being investigated by Vigilance team of NCB and Special Investigation Team (SIT) formed by Maharashtra Police. This further shows that the allegations have been levelled against Sameer Wankhede by different persons.

(n) The Defendant is a spokesperson of NCP, a National Political Party and in his capacity as a public servant and representative of the public, being MLA, he has tried to expose the illegalities committed by son of the Plaintiff, who is also a public servant. Now different investigating agencies are investigating into the illegalities committed by the son of the Plaintiff, as they have found *prima facie* material for investigation.

(o) The Plaintiff is asking for order of blanket injunction against Defendant's servants, authorized representatives, party members and all others over whom Defendant have no direct control. Therefore, no such order can be granted.

6. The Plaintiff filed Additional Affidavit dated 12.11.2021 bringing on record certain factual aspects and certain documents. It is *inter alia* contended that since Plaintiff is a retired government official and his daughter is a practicing advocate, at least, both of them are in

no way liable to public scrutiny. Even with respect to publishing any information about a public servant, the Defendant should have, at the very least, ensured that the information is verified and authentic and the source of such information should have been revealed to enable the common masses in whose interests the said information was purportedly revealed to decide for themselves the authenticity of the same or it should have been mentioned in the Defendant's defamatory statements itself that his statements and the underlying documents were not verified and that the readers and/or viewers discretion was required. The Plaintiff has produced about 20 documents along with said Additional Affidavit dated 12/11/2021 to show that Plaintiff's name is "Dnyandeo" and he belongs to Mahar Caste recognized as Scheduled Caste. The Plaintiff has thereafter raised additional contentions regarding each of the tweets, social media content annexed to the plaint. It is further contended that all the Defendant's remarks, insinuations and/or imputations stated by him during various press releases and or interviews or uploaded on his social media handle are definitely untruths and, as such, are, *per se*, tortious and defamatory in nature. The Defendant had never verified any of these details and tarnished the image of the Plaintiff and his family members by picking and choosing the facts, distorting it so as to suit his nefarious objective of bringing down the name, image, reputation, character and the societal status which the Plaintiff and his family members were enjoying.

7. The Defendant has filed additional affidavit dated 11.11.2021. The Defendant has *inter alia* contended that the documents produced by him can be divided into two parts. One part consists of certificates

issued by the concerned authorities such as Birth Certificate of Sameer Wankhede (being Exhibit “F” to the Complaint) and Nikah Nama of first marriage of Sameer Wankhede with Dr. Shabana Quraishi (being Exhibit “I” to the Complaint). Other part consists of tweets made on social media. It is contended that the Defendant has reasonably verified the documents contained in the first part. As far as the Birth Certificate of Sameer Wankhede is concerned, record of the same is maintained by E ward of Municipal Corporation of Greater Mumbai. He has verified the entry of the birth of Sameer Wankhede in the record maintained by the Corporation in the register maintained for record of birth at Sr. No.3744 of concerned year. As far as the Nikah Nama of first marriage of Sameer Wankhede with Dr. Shabana Quraishi is concerned, it is contended that the same was given to him by relative of the first wife. As far as tweets are concerned the Defendant contended that the same are tweets made on social media and that the Plaintiff in sub para (g) of para 8 of the Complaint has admitted that the photographs and information, which is only re-posted by the Defendant, are taken from their social media accounts. It is contended that the Plaintiff in the entire complaint has not averred that the Birth Certificate or Nikah Nama are false and fabricated nor have denied that the posts which are reproduced by the Defendant, are not posted by them.

8. The arguments were concluded on 12.11.2021 in the Interim Application seeking ad-interim relief and the same was reserved for order. However, on 16.11.2021 the learned Advocate for defendant filed praecipe annexing certain documents with the same In view of the same, the matter was placed on 17.11.2021. On 17.11.2021 this Court passed the following order:-

“Heard Mr. Shaikh, learned senior Counsel for the Plaintiff and Mr.Damle, learned Senior Counsel for the Defendant.

2. On 12/11/2021 the arguments were concluded and order was reserved.
3. On 16/11/2021 learned Counsel for the defendant moved praecipe and along with praecipe annexed letter dated 15/11/2021 issued by Health Officer, E Ward, Municipal Corporation of Greater Mumbai (MCGM) (Exhibit – A); copy of declaration dated 27/04/1993 executed by Jivan S. Jogure and Arun N. Choudhari (Exhibit-B); School Leaving Certificate issued by St. Paul High School dated 27/06/1986 as well as 12/07/1986 (Exhibit C-1); admission form executed by the Plaintiff dated 30/06/1986 (Exhibit C-2); and leaving certificate (Primary Section I- IV) dated 12/06/1989 (Exhibit C-3).
4. Mr. Shaikh, learned Senior Counsel appearing for the Plaintiff has produced birth certificate dated 17/11/2021 issued by the Sub-Registrar, E-Ward, MCGM and caste certificate dated 24/07/1975.”

9. On the basis of the above pleadings and documents, tweets, media contents etc. both the learned Senior Counsels have argued their respective cases.

10. Mr. Arshad Shaikh, learned Senior Counsel appearing on behalf of the Plaintiff submitted that the Plaintiff’s son - Mr. Sameer

Wankhede is presently posted as the Zonal Director of the Narcotics Control Bureau, Government of India ("NCB"). In the course of his duties as an officer of the NCB, the Plaintiff's son was and even today is, actively involved in busting drug racket. In the said process, he has arrested various criminals associated with the drugs. His son has recently cracked various cases in which close relatives of various politicians and bollywood personalities were arrested. He submitted that the Defendant's son-in-law Mr.Sameer Khan was arrested on 13/01/2021 by the NCB in connection with the NDPS case and he was released on bail on 27/09/2021. He submitted that when Defendant's son-in-law was inside jail, Defendant kept complete silence and the defamatory tweets, videos, press conferences etc. were started on 14/10/2021 and continuing till date. He submitted that the Defendant came to know that the NCB has decided to challenge order granting bail to the Defendant's son-in-law in the High Court and since then the impugned activities have started.

10.1. Mr.Shaikh, the learned Senior Counsel pointed out the material annexed to the plaint and submitted that said tweets/videos/press conferences etc. are initiated immediately after release of the Defendant's son-in-law on bail and continues even today. The only illegal motive of the Defendant for resorting to such pressure tactics seems to be the fact that the NCB had, in fact, moved the Hon'ble Bombay High Court seeking cancellation of Bail of Mr.Sameer Khan, the Defendant's son-in-law and on the date of the presentation of the present plaint, the said Application is pending adjudication.

10.2. He submitted that the Defendant is continuing with the

alleged activities without verifying the truthfulness in the allegations made by him. He pointed out all the exhibits annexed to the plaint i.e. the tweets/social media content etc. published by the Defendant, which according to him are defamatory. He pointed out several documents annexed to the Plaintiff's Additional Affidavit dated 12/11/2021 to contend the said tweets/videos etc. annexed to the plaint and available on social media account of the Defendant are false.

10.3. He submitted that whats-app chat of the Plaintiff or his family members published on the twitter account of the Defendant are manipulated. He submitted that the family vacation of his son at Maldives was given colour of business vacation and false allegations of extortion are made. He submitted that photograph of Plaintiff's son alleged to be taken at Grand Hyatt Hotel in Dubai as alleged by the Defendant was in fact taken at the lounge of Mumbai airport.

10.4. He submitted that when Plaintiff's son is performing his official duties it is irrelevant whether he is Hindu or Muslim and unnecessarily the Defendant is creating confusion about the same.

10.5. The learned Senior Counsel appearing for the Plaintiff relied on conclusion (F) in the judgment of Hon'ble Supreme Court in the matter between ***Justice K. S. Puttaswamy, (Retd.) and Anr. Vs. Union of India and Anr.*** reported in ***(2019) 1 Supreme Court Cases 1***. He relied on order dated 27/11/2020 of Delhi High Court in case of ***Whitehat Education Technology Pvt. Ltd. Vs. Aniruddha Malpani*** and order dated 21/10/2021 of Division Bench of Delhi High Court

confirming the order of Learned Single Judge of Delhi High Court in the case of **Whitehat Education** (supra), order dated 13/07/2021 of Delhi High Court in the matter between **Lakshmi Murdeshwar Puri Vs. Saket Gokhale** and order dated 29/01/2016 of Orissa High Court in the matter between **Navin Das and Another Vs. Rangita Singh** to substantiate his submission that the suit as filed by the Plaintiff is maintainable. He submitted that in the facts and circumstances of this case and in the interest of justice ad-interim relief in terms of prayer clause (c) of the Interim Application be granted otherwise the Plaintiff will suffer irreparable harm, loss and injury.

11. Mr. Atul Damle, the learned Senior Counsel appearing on behalf of the Defendant on the other hand defended the tweets, videos, press conferences etc. of the Defendant. He submitted that the Defendant after verifying the factual position has published the same on social media. He submitted that the said tweets, media, content etc. are published on the basis of documentary evidence. The authenticity and admissibility of the documentary evidence on the basis of which the Defendant has tweeted can be decided only at the stage of trial.

11.1. He submitted that the documentary evidence on the basis of which the Defendant has tweeted is part of public record. Birth certificate of son of the Plaintiff - Sameer Wankhede is in the record of the MCGM (Exhibit-F to the plaint). As per the said certificate the name of father of said Sameer Wankhede is shown to be Dawood Wankhede and the caste is shown as Muslim.

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11.2. His tweets are also on the basis of Nikah Nama of the first marriage of Sameer Wankhede with daughter of Shabana Qureshi (Exhibit-I to the plaint) which was given to the Defendant by the relative of the first wife of Sameer Wankhede.

11.3. The tweets/social media contents and also the photographs and information from social media account of the Plaintiff or his relatives was republished by the Defendant on his social media account.

11.4. The Defendant has reasonably verified the documents.

11.5. The Plaintiff has filed present suit on behalf of his family members in a representative capacity and therefore he has to comply with mandatory requirements of Order I Rule 8 of CPC and unless the same is done, the Plaintiff is not entitled for any relief.

11.6. The family members of the Plaintiff being adult members should have initiated independent legal proceedings for defending their civil rights.

11.7. The defence of the Defendant squarely falls within first 3 exceptions and exception 9 to section 499 of Indian Penal Code, 1860.

11.8. He relied on affidavit dated 23/10/2021 of Prabhakar Raghoji Sail which was annexed as Exh. C to the Criminal Writ Petition No.4036 of 2021 filed by Sameer Dnyandev Wankhede

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against State of Maharashtra and others. He inter alia relied on the following statements in the said affidavit :

“11. At about 12.30 p.m. Kiran Gosavi accompanied by NCB official took Aryan Khan in his white Innova to NCB office. I reached NCB office walking. At around 1.00 a.m. I received a call from K.P. Gosavi instructing me that I should sign as pancha and called me to NCB office. I reached there and Sameer Wankhede instructed the staff to take my signatures and name. One Salekar from NCB told me sign on 10 blank papers. Salekar asked me my Adhaar details, as I was not carrying my adhaar card. I asked him if I could send soft copy of the same to his whats app. I accordingly send my adhaar card soft copy from my cell no.9137566499 on whats app number 8167609712. After that he asked me to eat food and took one packet of food for the driver Vijay Suryavanshi.

12. After some time K.P. Gosavi came down and met one person named Sam D'souza at 500m away from NCB office. Sam D'souza spoke to K.P. Gosavi for 5 minutes and again after going around the NCB office the said Sam D'Souza and K.P. Gosavi got down from the car and met again. After that K.P. Gosavi left in the white Innova and Sam D'souza's Innova Crysta followed us. Then we stopped at Lower Parel bridge near Big bazaar and Sam also stopped at the said location. Till such time we reached Lower Parel K.P.Gosavi was talking to Sam on the phone and stated that you put a bomb of 25 crores and lets settle at 18 final because we have to give 8 crores to

Sameer Wankhede.”

11.9. Mr.Damle, learned Senior Counsel submitted that the Plaintiff is seeking the order of blanket injunction against Defendants’ servants, authorised representative, party members and all others on whom he will have no direct control and therefore such order be not granted.

11.10. He relied on the judgment of Delhi High Court reported in **(2002) 61 DRJ 123 in Harsh Mendiratta vs Maharaj Singh And Ors.** to substantiate his arguments that an action for defamation is maintainable only by the person who is defamed and not by his friends, relatives and family members. He relied on the judgment of the Supreme Court reported in **(2016) 7 SCC 221** in the matter between **Subramanian Swamy Vs. Union of India** particularly paragraphs 66 to 75 and paragraphs 179 to 185. He thus submitted that no ad-interim injunction be granted.

12. Before considering the rival submissions it is necessary to set out legal position with respect to various issues raised by the respective parties.

12.1. In Justice K. S. Puttaswamy (Retd.) (supra), the Supreme Court in conclusion (F) explained concept of “Privacy” as follows:-

“(F) Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and

recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;”

12.2. In Subramanian Swamy (supra), the Supreme Court has discussed meaning of the term “Defamation” and concept of “Reputation”. The relevant portion of paragraph 23, 25, 28, 29 and 30 is reproduced hereinbelow:-

“23. Meaning of the term “defamation”

“23.1 Salmond & Heuston on the Law of Torts, 20th Edn.7 define a “defamatory statement” as under:

“A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of right thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right thinking member of society....”

23.2 Halsburys Laws of England, 4th Edn., Vol. 28, defines “defamatory statement” as under:

“10. Defamatory statement.—A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.”

23.3 The definition of the term has been given by Cave, J. in *Scott v. Sampson* *Scott v. Sampson*, 1882 LR 8 QBD 491 DC as a “false statement about a man to his discredit”.

23.4 “Defamation”, according to Chambers Twentieth Century Dictionary, means to take away or destroy the good fame or reputation; to speak evil of; to charge falsely or to asperse. According to Salmond: “The wrong of defamation, consists in the publication of a false and defamatory statement concerning another person without lawful justification. The wrong has always been regarded as one in which the court should have the advantage of the personal presence of the parties if justice is to be done. Hence, not only does an action of defamation not survive for or against the estate of a deceased person, but a statement about a deceased person is not actionable at the suit of his relative.”

“Concept of Reputation -

25. Having dealt about “defamation”, we would like to refer to the intrinsic facets of “reputation” and what constitutes reputation. The allusions is a cherished constituent of life and not limited or restricted by time. The description may be different, but the crucial base is the same.

28. The famous Greek philosopher and thinker Socrates taught: “Regard your good name as the richest jewel you can possibly be possessed of—for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous task to rekindle it again. The way to gain a good reputation is to endeavour to be what you desire to appear.”

29. The philosopher in Aristotle inspired him to speak: “Be studious to preserve your reputation; if that be once lost, you are like a cancelled writing, of no value, and at best you do but survive your own funeral”.

30. While speaking about reputation, William Hazlitt had to say: “A man's reputation is not in his own keeping, but lies at the mercy of the profligacy of others. Calumny requires no proof.

The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it.”

12.3. It is settled legal position that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens under Article 21 of the Constitution of India. In fact in Justice K. S. Puttaswamy (Retd.) and Anr. (supra), it has been held that life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human being and the quest for liberty are the foundational pillars of the Indian Constitution. It has been further held that life and personal liberty are not creations of the Constitution. These rights are recognized by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within. Privacy is a constitutionally protected right which emerges primarily from guarantee of life and personal liberty in Article 21 of the Constitution. Elements of privacy also arise in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III. Privacy is the constitutional core of human dignity. Privacy has both a normal and descriptive function. At a normative level privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.

12.4. It is also required to be kept in mind that Constitution of India guarantees right to freedom of speech and expression under Article 19(1) (a) subject to the restrictions imposed under Article 19(2). The relevant portion of Article 19 is reproduced hereinbelow for ready reference:-

“Article 19. Protection of certain rights regarding freedom of speech etc:

1. All citizens shall have the right

a) To freedom of speech and expression;

2. Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”

12.5. Thus although the Plaintiff and his family members are having right to privacy which is part of Article 21, the Defendant is having right to freedom of speech and expression subject to the restrictions imposed under Article 19(2) of the Constitution of India. Thus in this case it is necessary to balance fundamental rights of the Plaintiff and that of the Defendant.

12.6. In Subramanian Swamy (supra) the Supreme Court has discussed the concept of balancing of fundamental rights. The question before the Supreme Court was whether section 499 and 500

of Indian Penal Code are violative of Article 21 of the Constitution of India. The relevant portion of paragraphs 136, 137 and 144 are set out hereinbelow:-

"Balancing of fundamental rights"

136. To appreciate what we have posed hereinabove, it is necessary to dwell upon balancing the fundamental rights. It has been argued by the learned counsel for the petitioners that the right conferred under Article 19(1)(a) has to be kept at a different pedestal than the individual reputation which has been recognised as an aspect of Article 21 of the Constitution. In fact the submission is that right to freedom of speech and expression which includes freedom of press should be given higher status and the individual's right to have his/her reputation should yield to the said right.

137.The issue herein is sustenance and balancing of the separate rights, one under Article 19(1)(a) and the other, under Article 21. Hence, the concept of equipoise and counterweighing fundamental rights of one with other person. It is not a case of mere better enjoyment of another freedom. In *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat* *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat*, 1975 1 SCC 11, it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the directive principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests.

144. The aforementioned authorities clearly state that balancing of fundamental rights is a constitutional necessity. It is the duty of the Court to strike a balance so that the values are sustained. The submission is that continuance of criminal defama-

tion under Section 499 IPC is constitutionally inconceivable as it creates a serious dent in the right to freedom of speech and expression. It is urged that to have defamation as a component of criminal law is an anathema to the idea of free speech which is recognised under the Constitution and, therefore, criminalisation of defamation in any form is an unreasonable restriction. We have already held that reputation is an inextricable aspect of right to life under Article 21 of the Constitution and the State in order to sustain and protect the said reputation of an individual has kept the provision under Section 499 IPC alive as a part of law. The seminal point is permissibility of criminal defamation as a reasonable restriction as understood under Article 19(2) of the Constitution. To elucidate, the submission is that criminal defamation, a pre-Constitution law is totally alien to the concept of free speech. As stated earlier, the right to reputation is a constituent of Article 21 of the Constitution. It is an individual's fundamental right and, therefore, balancing of fundamental right is imperative. The Court has spoken about synthesis and overlapping of fundamental rights, and thus, sometimes conflicts between two rights and competing values. In the name of freedom of speech and expression, the right of another cannot be jeopardised.....

Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable consequence which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to court and state that he has been wronged and abused. He can take recourse to a procedure recognised and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. "Reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate."

(Emphasis supplied)

12.7. In Subramanian Swamy (supra) although Supreme Court was concerned with section 499 and 500 of Indian Penal Code, civil action

in case of defamation in the absence of codified law was considered. The relevant discussion in paragraph 66 to 69 is reproduced hereinbelow for ready reference:-

“66. We have referred to the aforesaid aspect only to highlight the intention of the Founding Fathers and also how contextually the word “defamation” should be understood. At this stage, we may state that in the course of hearing, an endeavour was made even to the extent of stating that the word “defamation” may not even call for a civil action in the absence of a codified law. In this regard, we may usefully refer to M.C Setalvad's Hamlyn Lectures (Twelfth Series) “The Common Law in India” wherein India's first Attorney General expressed that: “an important branch of law which has remained uncoded in India is the law relating to civil wrongs.

Some of the most important rights of a person which the law protects from injury are rights to the security of his person, his domestic relations and his property and reputation ... (p. 108)

One of the outstanding facts of English legal history for the last three centuries is the development of the law of torts from small beginnings to its present dimensions as a separate branch of law. The action for damages as a remedy for violations of rights and duties has been fashioned by lawyers, judges and juries of England as an instrument for making people adhere to standards of reasonable behaviour and respect the rights and interest of one another. A body of rules has grown and is constantly growing in response to new concepts of right and duty and new needs and conditions of advancing civilization. The principles which form the foundation of the law of torts are usually expressed by saying the *injuria sine damno* is actionable but *damnum sine* (or *absque*) *injuria* is not ...p (109)

67. The Common Law of England was the prevalent law being adopted before the Constitution came into force and it is declared as a law in force under Article 372 of the Constitution of India by a larger Bench decision in *Supt. and Remembrancer of Legal Affairs v. Corpn. of Calcutta* Supt. and Remembrancer of Legal Affairs v. Corpn. of Calcutta.¹⁷

68. The position has further become clear in *Ganga Bai v. Vijay Kumar Ganga Bai v. Vijay Kumar*, 1974 2 SCC 393 wherein this Court has ruled thus: (SCC p. 397, para 15)

..15. ... There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit."

69. We have referred to this aspect only to clarify the position that it is beyond any trace of doubt that civil action for which there is no codified law in India, a Common Law right can be taken recourse to under Section 9 of the Code of Civil Procedure, 1908, unless there is specific statutory bar in that regard."

12.8. The Supreme Court in the judgment reported in *(1994) 6 SCC 632* in the matter between *R. Rajagopal @ R. R. Gopal and Anr. Vs. State of Tamil Nadu*, held that right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of same coin i.e. (i) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and, (ii) Constitutional recognition given to the right of privacy which protects personal privacy against unlawful governmental invasion. The Supreme Court after elaborately considering various facets summarized the broad principles in paragraph 26 and 27. The said paragraphs 26 and 27 are set out hereinbelow :

“26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency (Article 19(2)) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicized in press/media.

(3) There is yet another exception to the rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case,

it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that [Official Secrets Act](#), 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

27. We may hasten to add that the principles above mentioned are only the broad principles. They are neither exhaustive nor all-comprehending; indeed no such enunciation is possible or advisable. As rightly pointed out by Mathew, J., this right has to go through a case-by-case development. The concepts dealt with herein are still in the process of evolution.”

(Emphasis supplied)

13. Thus, following legal position emerges from the above:-

13.1. Reputation being an inherent component of Article 21, it should not be allowed to be sullied solely because another individual can have its freedom. Therefore, the balance between the two rights needs to be struck. “Reputation” of one cannot be allowed to be crucified at the altar of the other's right of free speech.

13.2. Right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.

13.3. None can publish anything concerning these matters whether truthful or otherwise without citizen's consent.

13.4. However, publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is so as once a matter becomes the matter of public record, the right to privacy no longer subsists and it becomes legitimate subject for comment by press, media and others.

13.5. In case of public officials right to privacy or for that matter remedy of action for damages is not available with respect to their acts and conduct relevant to discharge of official duties. It is to be established that such publication is totally false and that the same has been done without reasonable verification of the facts.

13.6. Where the publication is proved to be false and actuated by malice or personal animosity, the Defendant would have no defence and would be liable for damages.

13.7. In matters not relevant to discharge of his duties, the public official enjoys the same protection as any other citizen.

13.8. Right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised.

Above parameters are required to be kept in mind while deciding the ad-interim relief as sought by the Plaintiff.

14. It is also important to note that although the Plaintiff and his family members are having right to privacy which is part of Article 21, the Defendant is having right to freedom of speech and expression subject to the restrictions imposed under Article 19(2) of the Constitution of India. Thus in this case it is necessary to balance fundamental rights of the Plaintiff and that of the Defendant.

15. Thus, in the present case, the following factors/points are required to be taken into consideration :

- (i) Whether the tweets, media content, videos, press conference etc. which are subject matter of the present suit are concerning acts and conduct of the public official,

namely, Sameer Wankhede relevant to discharge of his official duties?

- (ii) Whether the said tweets media content, videos, press conference etc. contain allegations which are reckless disregard for truth i.e. totally false?
- (iii) Whether the said publications are proved to be false and actuated by malice or personal animosity?
- (iv) Whether the Defendant acted after reasonable verification of the facts?

16. It is the case of the Defendant that the said tweets media content, videos, press conference etc. are made with a view to make aware public about following important two aspects :

- (1) Mr.Sameer Wankhede is Muslim by birth and that he has secured the Government job by falsely claiming to be from scheduled caste. (Allegation No.1)
- (2) There is material to show that said Sameer Wankhede sought illegal gratification in cases filed by NCB. (Allegation No.2).

The above two aspects clearly show that they are relating to the discharge of the official duties of said Mr. Sameer Wankhede.

17. As far as first allegation is concerned the relevant tweets media content, videos, press conference etc. are at Exhibit-F Page 42, Exhibit-G Page 43, Exhibit-H Page 45, Exhibit-I Page 46, Exhibit-K Page 48 of the plaint. It is claim of the Defendant that Exhibit-F at Page 42 is from the record of MCGM. However, bare perusal of Page 42 shows that there is interpolation on the said document. The name "SAMEER" is clearly interpolation and is in different handwriting. There are some other interpolations also. The aforesaid allegation No.1 is primarily made on the basis of said document at Page 42 of the plaint clearly shows that the Defendant has not acted after reasonable verification of the facts. As far as Page 43 is concerned which is allegedly profile picture of Wankhede Dawood, Mr. Shaikh, learned Senior Advocate submitted that the same appears in that manner as Plaintiff's Cell number is saved by the name "Wankhede Dawood" in the cell from which same was accessed. As far as Nikah Nama at Exhibit-I Page 45 is concerned, the same does not appear to be from any public record. Thus, only document appearing from the public record is Exhibit-F at Page 42 and there are interpolations on the said document. Thus, if allegations are made on the basis of that document then it cannot be said that the allegations are made after reasonable verification of the facts. It is very important to note that the Plaintiff has filed additional affidavit dated 12/11/2021 and produced several documents to substantiate his contention that name of the Plaintiff is Dnyandeo and he belongs to "Mahar" caste recognised as scheduled caste. The documents produced by the Plaintiff along with additional affidavit are as follows :

"(i) Copy of Plaintiff's Certificate dated 21/07/1972 issued by

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NCC Senior Division Army Wing (Infantry) showing the name of the Plaintiff as 'Dnyandeo'.

- (ii) Copy of Plaintiff's Statement of Marks of his final Bachelor in Arts Examination dated 17/07/1973 showing the name of the Plaintiff as 'Dnyandeo'.
- (iii) Copy of Plaintiff's Caste Certificate dated 24/02/1974 issued by Tahsildar, Washim, District- Akola, showing the name of the Plaintiff as 'Dnyandeo' and that he belongs to "Mahar" caste recognized as Scheduled Caste.
- (iv) Copy of Plaintiff's Passing Certificate dated 12/03/1974, of the final Bachelor in Arts Examination showing the name of the Plaintiff as 'Dnyandeo'.
- (v) Copy of Plaintiff's Character Certificate dated 22/03/1974 issued by Deputy Chief Executive Officer, Zilla Parishad, Akola showing the name of the Plaintiff as 'Dnyandeo'.
- (vi) Copy of Plaintiff's Statement of Marks of his Masters in Arts Examination Part-II dated 02/08/1975 showing the name of the Plaintiff as 'Dnyandeo'.
- (vii) Copy of Plaintiff's Driving License dated 26/05/1998 issued by RTO Mumbai showing the name of the Plaintiff as 'Dnyandeo'.

- (viii) Copy of Plaintiff's Form MTR 42-A dated 02/07/2007 showing the name of the Plaintiff as 'Dnyandeo' and the fact that his wife, Mrs. Zaheda Wankhede was his nominee.
- (ix) Copy of School Leaving Certificate dated 14/02/2008 (Duplicate copy) in favour of the Plaintiff, showing the name of the Plaintiff as 'Dnyandeo'.
- (x) Copy of Plaintiff's Caste Certificate dated 05/03/2008 showing the name of the Plaintiff as 'Dnyandeo' and caste as Mahar.
- (xi) Copy of Plaintiff's Migration Certificate dated 20/03/2009 showing the name of the Plaintiff as 'Dnyandeo'.
- (xii) Copy of Plaintiff's Caste Certificate showing the name of the Plaintiff as 'Dnyandeo' and that he belongs to Mahar Caste recognized as Scheduled Caste.
- (xiii) Copy of the Plaintiff's information submitted to the concerned officer of Maharashtra State Excise Department, Raigad showing the name of the Plaintiff as 'Dnyandeo' and that he belongs to Mahar Caste recognized as Scheduled Caste.

- (xiv) Copy of Plaintiff's Passport showing the name of the Plaintiff as 'Dnyandeo'.
- (xv) Copy of Plaintiff's PAN Card (as per IT Department's earlier style and format) showing the name of the Plaintiff as 'Dnyandeo'.
- (xvi) Copy of Plaintiff's PAN Card (as per IT Department's earlier style and format) showing the name of the Plaintiff as 'Dnyandeo'.
- (xvii) Copy of Plaintiff's Voter's Identity Card showing the name of the Plaintiff as 'Gyandev'.
- (xviii) Copy of Plaintiff's Aadhar Card showing the name of the Plaintiff as 'Dhyandev'.
- (xix) Copy of Plaintiff's Identity Card issued by the Government of Maharashtra (Maharashtra State Excise).
- (xx) Copy of Plaintiff's wife's (since deceased) Affidavit dated 06/02/2002 showing the fact that she got married to the Plaintiff as per Hindu rites and culture and got converted into Hindu religion . Further showing the fact that she got married to the Plaintiff -'Dnyandev'.

- (xxi) Copy of Plaintiff's wife's (since deceased) Ration Card showing the name of the Plaintiff as 'Dnyandev'.
- (xxii) Copy of Plaintiff's wife's (since deceased) Driving License showing the name of the Plaintiff as 'Dayandeo'.
- (xxiii) Copy of Plaintiff's wife (since deceased) Voter's Identity Card showing the name of the Plaintiff as 'Gyandev'.
- (xxiv) Copy of Plaintiff's wife's (since deceased) Aadhar Card showing the name of the Plaintiff as 'Dhyandev'.
- (xxv) Copy of Plaintiff's daughter's PAN Card showing the name of the Plaintiff as 'Dnyandev'.
- (xxvi) Copy of Plaintiff's daughter's Police Clearance Certificate issued by DCP (S.B.), Mumbai City for the purpose of obtaining Sanad showing the name of the Plaintiff as 'Dnyandev'.
- (xxvii) Copy of Plaintiff's Son's School Leaving Certificate dated 30/06/1995 showing the name of the Plaintiff as 'Dnyandev' and the fact that the Plaintiff's son belongs to Mahar Caste recognized as Scheduled Caste.
- (xxviii) Copy of Plaintiff's Son's Passing Certificate of Bachelor of Arts Examination showing the name of the Plaintiff as 'Dnyandeo'.

18. Thus, the Plaintiff has produced voluminous documents to show that his name is “Dnyandeo” and he belongs to Mahar caste recognised as scheduled caste. Most of the above referred documents are part of the public record. The document at Page 42 of the plaint which the Defendant has produced is stated to be from the record of MCGM. However, there are interpolation on the said document. There is doubt regarding authenticity of the same. Thus, it is clear that the Defendant has not reasonably verified the facts.

19. It appears that the Defendant realised the above aspect after arguments were concluded on 12/11/2021 and the matter was adjourned for orders and therefore the Defendant filed praecipe dated 16/11/2021 before the pronouncement of the order. In the said praecipe, it has been stated that additional affidavit of the Plaintiff was served on the Defendant on 11/11/2021 and, therefore, the Defendant could not get time to reply the same. It is further stated in the said praecipe that the Defendant has obtained further information in respect of birth certificate of Plaintiff’s son, namely, Sameer Wankhede. Along with said praecipe at Exhibit-A letter dated 15/11/2021 of Health Officer, E-Ward, MCGM was produced. The said letter records that in 1979 in the birth certificate the father’s name was mentioned as “Dawood K. Wankhede”, however, the same was corrected on 4/05/1993 as “Dnyandeo Kachru Wankhede”. The name of the Plaintiff’s mother is “Zahida Bano” and the name of the new born child is “Sameer”, date of birth is 14/11/1979 and religion is mentioned as “Muslim”. To the said praecipe dated 16/11/2021 declaration dated 26/04/1993 executed by Jivan S. Jogure and Arun N. Choudhari was annexed. It is stated in the said declaration that

they know “Dnyandeo Wankhede” and the correct name is “Dnayandeo Kachru Wankhede” and not “Dawood Wankhede”. Various documents are annexed to the said praecipe dated 16/11/2021 at Exhibit C-1, C-2 and C-3. The said documents are (i) School leaving certificate of St. Paul High School – Primary dated 12/07/1986 (Exhibit C-1), (ii) admission form executed by the Plaintiff dated 30/06/1986 (Exhibit C-2); and (iii) school leaving certificate (Primary Section I – IV) dated 12/06/1989 (Exhibit C-3).

20. Without going into the correctness and authenticity of the documents/information produced by the Defendant along with praecipe dated 16/11/2021, it is clear that the Defendant while making tweets media content, videos, press conference etc. regarding allegation No.1 have not carried out reasonable verification of facts. The documents now sought to be produced along with praecipe dated 16/11/2021 are obtained after the matter is reserved for orders on 12/11/2021 and in any case the said information has been obtained by the Defendant after making tweets, media content, videos, press conference etc. The Defendant should have reasonably verified the facts before making allegations.

21. Mr. Shaikh, learned Senior Counsel on behalf of the Plaintiff relied on Judgment of Delhi High Court in Laxmi Murdeshwar Puri (supra). He relied on following observations in para 28 of the said Judgment:-

“28. Mr. Naved sought to submit that, “unfortunately”, the law did not require a vigilance, who sought to post, on social media platforms, messages against public figures, to carry out any

preliminary exercise of verification before doing so. I am unable to accept this submission. To my mind, before posting tweets such as those which were posted by the defendant against the plaintiff, it was incumbent on the defendant to carry out a preliminary due diligence exercise. Ideally, in the first instance, clarification ought to have been sought from the person against whom the messages were intended to be posted. If, in a given case, such an exercise was felt to be counter-productive, enquiries and clarifications have, nonetheless, to be sought from the available official sources.

Prima facie there is substance in the contention of Mr. Shaikh that the Defendant has not acted after reasonable verification of facts.

22. As far as second aspect that Mr. Sameer Wankhede sought illegal gratification, the relevant tweet is at Exhibit-B Page 38 which is as under:-

“(उगाही का धंधा मालदिव में)” (i.e. Business of extortion in Maldives)

The same indicates the Plaintiff’s son – Sameer Wankhede is conducting the business of extortion at Maldives.

22.1. Exhibit-C on page 39 are the photographs which are taken at Maldives.

22.2. Exhibit-D at Page 40 is the following tweet :-

“Sameer Wankhede has accepted the fact that he had visited Maldives but he denies the visit to Dubai.

Here is the proof of his visit to Dubai with his sister. Sameer Wankhede was at Grand Hyatt Hotel in Dubai on 10th December,

2020. His lie stands exposed.”

22.3. Along with said tweet two photographs were published. Advocate Shaikh, learned Senior Counsel of the Plaintiff has submitted that Plaintiff's son had gone to Maldives with his family and the same is family vacation. As far as allegation at Exhibit-D page 40 which alleges that Sameer Wankhede's photograph was taken at Grant Hyatt Hotel in Dubai on 10/12/2020, it is submitted by Mr. Shaikh, learned Senior Counsel appearing on behalf of the Plaintiff that said photograph was taken at lounge of the Mumbai Airport.

22.4. Mr. Shaikh, the learned Senior Counsel has relied on the following statement of Deputy Director General of the central agency Mutha Ashok Jain published on 22/10/2021 by ANI:-

“Following Maharashtra Minister Nawab Malik's claim that Narcotics Control Bureau (NCB) zonal director Sameer Wankhede visited Dubai to extort money, the Deputy Director General of the central agency Mutha Ashok Jain on Thursday said there was no application from Wankhede for going to Dubai.”

“After joining NCB, there was no application from him (Sameer Wankhede) for going to Dubai. He sought permission for going to Maldives with his family.” Jain told mediapersons here.”

22.5. Thus, these aspects also show that the Defendant has not taken due care and has not conducted reasonable verification.

23. However at the same time it has to be seen that very serious allegations are made against Plaintiff's son-Sameer Wankhede by Panch-Prabhakar Raghoji Sail in his affidavit dated 23/10/2021, the

relevant portion of the same is already reproduced hereinabove.

Mr.Damle, learned Senior Counsel appearing on behalf of the Defendant submitted that the evidence produced by the Defendant has helped the Government machinery to take corrective steps against Sameer Wankhede, son of the Plaintiff. He submitted that Sameer Wankhede is facing vigilance inquiry and that the Director of Narcotics Control Bureau has transferred total of six cases from Mumbai Unit headed by Zonal Director Sameer Wankhede to it's operation unit in Delhi. He submitted that allegations made against Mr. Sameer Wankhede are now being investigated by Vigilance team of NCB and Special Investigation Team (SIT) formed by Maharashtra Police.

24. It is also very important to note that admittedly the Defendant's son-in-law was arrested on 13/01/2021 by NCB in NDPS case and he was released on bail on 27/09/2021 and the tweets media content, videos, press conference etc. has started from 14/10/2021. Thus, it is obvious that the tweets media content, videos, press conference etc. are actuated by malice or personal animosity. The right to privacy is implicit in right to life and liberty guaranteed to the citizens of this country by Article 21. A citizen has right to safeguard his privacy, however, the Defendant has made allegations against the Plaintiff's son – Sameer Wankhede, who is presently posted as Zonal Director of Narcotics Control Bureau, Government of India and, therefore, he is public officer. The public have right to examine and comment on actions of public officials. However as held by the Supreme Court it has to be done after reasonable verification of the facts. Apart from that, it is necessary to balance Plaintiff's right of

privacy and also Defendant's right of freedom of speech and expression. Therefore, although the Plaintiff is not entitled for blanket injunction as sought, however, when particularly it is in the facts and circumstances of this case prima facie found that the Defendant's actions are actuated by malice or personal animosity it is necessary that the Defendant be directed to publish writing, speaking with media including electronic media and the social media or publishing in any manner whatsoever any content/material which is defamatory of the Plaintiff and/or his family members only after carrying out reasonable verification of the facts.

25. One of the contention raised by the Defendant is that it was incumbent upon the Plaintiff to comply with the provisions of Order 1 Rule 8 of CPC as the Plaintiff has filed present suit claiming alleged defamation of the Plaintiff and his family members. Mr.Damle, the learned Senior Counsel on behalf of the Defendant relied on Delhi High Court judgment in the case of **Harsh Mandiratta (supra)** wherein it has been held that an action for the defamation is maintainable only by the person who is defamed and not by his friends, relatives and family members. As against this Mr.Shaikh, the learned Senior Counsel appearing on behalf of the Plaintiff relied on the judgment of Orissa High Court in the case of **Navin Das and another (supra)** wherein the suit was filed by the wife regarding news item published in the newspaper tarnishing the image of her father-in-law and her husband. Mr.Shaikh, the learned Counsel appearing for the Plaintiff argued that in the said case the arguments were advanced to the effect that the news item published would give a definite impression that the image and reputation of the Plaintiff's

family as a unit as well as members of the family as individuals has been tarnished by publication of such news and the same was accepted. Following observations in para 8 of said Navin Das case (supra) are relevant.

“8. On perusal of the news items reproduced in the plaint, it is apparent that most of the news items/publications are relating to either the husband and/or the father-in-law of the plaintiff-respondent. But, there are some publications, more particularly, the news items published on 2nd August, 2014 as referred to in paragraph -24 of the plaint, publication dated 3rd August, 2014 referred to in paragraph- 25 of the plaint as well as publication dated 5th August, 2014 referred to in paragraph -27 of the plaint, relate to the family members of the plaintiff –respondent. In that view of the matter, it cannot be said that the publication in the news paper was only relating to the husband and father-in-law of the plaintiff –respondent.”

The said observations are also applicable to the present case.

25.1. In the present case it is true that Plaintiff has come up with the case that his family consisting of his daughter, son and daughter-in-law is defamed but he has also come up with positive case that he himself has been defamed. Apart from that the allegation levelled is that the Plaintiff is Muslim and inspite of that record has been changed to make show that the Plaintiff is belonging to Mahar community which is scheduled caste. In the present case it is the allegation that Plaintiff's name is Dawood and not Dnyandev and therefore, allegations are made against Plaintiff himself. Apart from that *prima facie* even if allegations are made against Plaintiff's son, in the facts and circumstances of this case the Plaintiff is also

defamed in the process. Therefore, at this ad-interim stage although I am not dealing with the said contentions in detail, however, *prima facie* the suit as filed appears to be maintainable in the facts and circumstances of this case.

26. Mr. Damle, the learned Senior Counsel has submitted that his case is covered by Exception No.1, Exception No.2, Exception No.3 and Exception No.9 to Section 499 of Indian Penal Code. On the other hand, Mr. Shaikh, the learned Senior Counsel on behalf of the Plaintiff submitted that the present case is civil action and it is a remedy in tort law and therefore, said section 499 of Indian Penal Code will have no application. At this ad-interim stage I am refraining from going into these aspects. In any case as far as the civil action is concerned, the Supreme Court has laid down guidelines in the case of **R.Rajgopal (supra)** and I have taken into consideration the same while deciding application seeking ad-interim relief against Defendant.

27. Mr. Damle, learned Senior Counsel is *prima facie* right in contending that the Plaintiff cannot seek prayer clause (c) in blanket manner as prayed.

28. It is clarified that I have considered only few tweets/social media posts etc. as annexed to the plaint for considering the ad-interim relief in terms of prayer clause 5(c).

29. The factors/points mentioned in paragraph 15 are answered in following manner. It is to be noted that these are only *prima facie* observations:-

- (i) The factual position on record show that the Defendant has raised very important issues concerning the acts and conduct of Plaintiff's son - Sameer Wankhede who is public official.
- (ii) In view of the letter dated 15/11/2021 of Health Officer, E-Ward, MCGM produced on 16/11/2021 (after the order was reserved on 12/11/2021) it cannot be said at this stage that allegation No.1 is totally false. In view of affidavit dated 23/10/2021 of panch-Prabhakar Raghoji Sail, it cannot be said at this stage that allegation No. 2 is totally false.
- (iii) Admittedly the Defendant's son-in-law was arrested on 13/01/2021 by NCB in NDPS case and he was released on bail on 27/09/2021 and the tweets media content, videos, press conference etc. against Plaintiff and his family members started from 14/10/2021. Thus, it is obvious that the tweets media content, videos, press conference etc. are actuated by malice or personal animosity. However, at this stage it cannot be said that the same are totally false.
- (iv) It cannot be said that the Defendant has acted after reasonable verification of the facts, however, at this prima facie stage and on the basis of material on record, it cannot be said that allegations made by the Defendant are totally false.

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30. In view of above ad-interim relief in terms of clause 5(c) can not be granted at this stage. However, it is necessary to direct the Defendant that he should conduct reasonable verification of the facts before publishing, writing, speaking in media including electronic media and the social media or publishing in any manner whatsoever any content/material which amounts to defamatory of Plaintiff or his family members. This direction is issued in accordance with the principles set out by Supreme Court in R. Rajgopal case (supra).

31. The Defendant to file reply to the Interim Application as well as to the additional affidavit dated 12/11/2021 filed on behalf of the Plaintiff within a period of two weeks from today.

32. The rejoinder, if any, to be filed by the Plaintiff within one week thereafter.

33. Stand over to 20th December, 2021.

[MADHAV J. JAMDAR, J.]