

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.748 OF 2021

1. Dhanyakumar s/o Dnyandeo Hange,
Aged about 44 years, Occu: Advocate,
R/o Bhodani, Tah. Indapur, Dist. Pune.
2. Nilesh s/o Umakant Ghuge,
Aged about 34 years,
Occupation: Agriculturist,
Resident of Pangrabandi,
Taluka: Malegaon,
District Washim (M.S.).
3. Dhondiram s/o Bhikaji Chavan,
Aged 45, Occu: Agriculturist,
Resident of Pangrabandi,
Taluka: Malegaon,
District Washim (M.S.). **PETITIONERS**

...V E R S U S...

State of Maharashtra through
Police Station Officer, P.S. Malegaon,
District Washim. **RESPONDENT**

Mr. Shyam Dewani, Advocate for Petitioners.
Mrs. K. R. Deshpande, APP for Respondent/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **8th OCTOBER, 2021.**

ORAL JUDGMENT:

The petitioners are arraigned as accused in Sessions

Trial 86/2012 which is pending in the Court of Sessions Judge, Washim.

2. The petitioners have moved an application seeking discharge. The trial Judge was implored time and again to decide the discharge application on merit. However, the trial Court has declined to exercise jurisdiction on the premise that the Hon'ble Supreme Court is in seisin of an appeal preferred by the complainant challenging the order of the High Court whereby two co-accused are discharged.

3. The relevant observations of the trial Court read thus:

10. On perusal of charge-sheet it appears that present accused are charge-sheeted for the offences punishable under section 302, 201, 435 read with section 34, 120 B of Indian Penal Code read with Arms Act 5/12. F.I.R. was registered on 02.1.2012. No doubt case is pending since long. It is clear that the application for discharge of accused no. 3 passed by Hon'ble High Court is challenged before the Hon'ble Supreme Court and still it is pending. It is true that there is no stay to present proceeding. However, the discharge application of one accused is challenged before the Hon'ble Supreme Court and it is pending. So it will be just and proper to wait till the decision of Hon'ble Apex Court. If we peruse the application filed by present accused, there is no any sufficient reason shown by the accused to expedite the application at Exh. 104, 114 and 130. Merely inconvenience is caused to the accused

cannot be good reason for early deciding those applications. So in my opinion there is no sufficient ground made out by the accused to grant early hearing of the applications at Exh. 104, 114 and 130. Hence application is liable to be dismissed.

4. In my considered view, the learned trial Court clearly failed to exercise jurisdiction vested in it. The pendency of the challenge to the discharge of the co-accused before the Hon'ble Supreme Court, ought not to have, in the absence of any interim order by the Hon'ble Supreme Court, been perceived as a fetter. The learned trial Court was conscious that the trial dates back to 2012. However, the trial Court clearly erred in observing that the inconvenience caused to the accused cannot be a good reason for deciding the discharge applications early. The trial Court failed to appreciate that expeditious trial is an integral facet of Article 21 of the Constitution of India. The trial Court was expected to hear and decide, either way, the discharge application and not to keep the same pending.

5. The order impugned is quashed.

6. The learned trial Judge is requested to hear the petitioners and decide the discharge applications Exh. 104, 114

and 130 on merit, and in accordance with law, as expeditiously as possible and in any event within the next two months.

7. The petition is allowed in the aforestated terms.

JUDGE

NSN