

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3550 OF 2022**

Balu Dnyandeo Kharat
V/s.

... Petitioner

State of Maharashtra & Anr.

... Respondents

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SHANKARSA
DHUDUM

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Ms. Sonali Bhosale along with Mr. Anirudh Rote i/b Expert Jurist for
Petitioner.

Ms. G. P. Mulekar, APP for Respondent-State.

**CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

DATE : 12th JUNE, 2023.

PC. :

1. It is an admitted fact on record that, after completion of investigation, the police have submitted charge-sheet in the present crime. Therefore Petitioner is having a substantive alternate remedy by way of filing an application for discharge before the Trial Court, as contemplated under Section 227 of Criminal Procedure Code.

2. It is the settled position of law and as has been decided in catena of decisions by Hon'ble Supreme Court, ordinarily the Court will not entertain the Petition under Article 226/227 Constitution of India, where the Petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is well

recognized principle which gained judicial recognition that, the High Court should direct party to avail himself of such remedies, one or other before he resorts to the constitutional remedy.

Reliance is placed on the following decisions :

- i) *Thansingh Nathmal Vs. The Superintendent of Taxes, Dhubri & Ors. Reported in AIR 1964 SC 1419.*
- ii) *A. Venkatasubbiah Naidu VS. S. Chellappan & Ors. Reported in (2000) 7 SCC 695.*
- iii) *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329.*
- iv) *Radhey Shyam & Anr. Vs. Chhabi Nath & Ors. Reported in (2015) 5 SCC 423.*
- v) *Genpact India Private Limited Vs. Deputy Commissioner of Income-Tax & Anr. Reported in (2019) 419 ITR 440 (SC).*
- vi) *Virudhunagar Hindu Nadargalo Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors. Reported in (2019) 9 SCC 538.*

3. According to us, filing an application for discharge before the Trial Court is not an onerous remedy and in fact an equally efficacious remedy. The Petitioner cannot be permitted to raise a spacious plea calling upon this Court to adjudicate his innocence in a Petition under Article 226 of Constitution of India. It is against the settled principles of law. At the same time, the Petitioner cannot be permitted to make the statutory provisions of Code of Criminal Procedure 1973 otious, by directly approaching this Court under Article 226 of the Constitution of India.

4. In view of the above and by reserving the remedy of filing an application for discharge before the Trial Court, Petition is disposed off.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)