

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 295 OF 2023**

Shahid Khan Ismile Khan

...Petitioner

V/s.

The State of Maharashtra

...Respondent

Mr.Yashodeep P. Deshmukh a/w Ms.Aditi M. Athawale, for the
Petitioner.

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

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

DATE : 20th JUNE 2023

PC.

1. Heard learned Advocate appointed to represent the
Petitioner and the learned A.P.P.

2. By the present Petition, the Petitioner has prayed for his
discharge from Sessions Case No.185/2019, pending on the file of
Sessions Court at Malegaon, District-Nashik, under Section 227 of
the Criminal Procedure Code.

3. At the outset, it is to be noted that the Petitioner is
having substantive alternate remedy to file an Application for
discharge under Section 227 of the Cr.P.C. before the Trial Court and
without availing the said remedy he has directly approached this

Court under Article 226 of the Constitution of India, which is not maintainable. As far as Application of Section 376(A) of I.P.C. is concerned, it is needless to mention that the Trial Court at the time of framing of charge and thereafter, at the time of conducting trial will certainly take note of the evidence on record as per law, to the crime allegedly committed by the Petitioner.

4. It is the settled position of law that, defense of an accused cannot be adjudicated in Writ jurisdiction and it is for the accused to establish his defense by leading cogent evidence before the Trial Court at the time of trial.

In view of the above, we are of the considered opinion that the present Petition is misconceived and is accordingly disposed of by reserving the remedy of the Petitioner to file an Application for discharge before the Trial Court and/or to contest the trial of S.C. No.185/2019 arising out of the C.R. No.75 of 2018 registered with Malegaon City Police Station, District-Nashik.

5. At this stage, Mr.Deshmukh, learned Advocate appointed to represent the Petitioner submitted that the Trial Court has not framed charge in the present case in about last 4 years. The Applicant is behind the bars, as the learned Single Judge of this Court has rejected his regular Bail Application No.1485/2020.

6. In view thereof, we direct the learned Additional

Sessions Judge/Special Judge (under POCSO Act) to commence the trial of the Petitioner in Sessions Case No.185 of 2019 arising out of the C.R. No.75 of 2018 registered with Malegaon Police Station, as early as possible.

7. Petition is disposed off in the aforesaid terms.

8. Before parting with the present Order, we place on record our appreciation for Mr.Deshmukh for his able assistance to this Court, as he is thoroughly prepared with the case in hand.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)