

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1009 OF 2020**

Asif Dargahi Shaikh & Ors.

... Petitioners

V/s.

The State of Maharashtra & Anr.

... Respondents

Adv.Sherin Baby i/b. Falcon Legal for Petitioners.

Mrs.M.M. Deshmukh, A.P.P for Respondent No.1-State.

Mr. Shilpan S. Gaonkar for Respondent No.2.

API Mr.Darade, Borivali Police Station, Mumbai is present.

**CORAM : A. S. GADKARI AND
SHIVKUMAR DIGE, JJ.****DATE : 13th June 2023.****P.C. :**

1. It is an admitted fact on record that, after filing of chargesheet by the Investigating Agency, the Special Court has taken cognizance of it and has numbered it as Special Case No. 378 of 2016. The said case is pending for final adjudication before the learned Special Judge (under POCSO Act), Greater Mumbai. Record clearly indicates that, the Petitioners had also filed an application for discharge below Exh.4 in the said Sessions case, which was rejected by the Trial Court by its Order dated 24th April 2018. Undoubtedly the said Order holds field as of today and is not either modified or set-aside by the higher Court.

2. In view of the aforesaid admitted facts, present petition under Article 226 of Constitution of India is filed for quashing of Special Case No. 378 of 2016 with a spacious plea that, the Trial Court did not consider certain vital aspects of the case. From the arguments of the learned counsel for Petitioners, it is apparent that the Petitioners intends that, this Court should adjudicate the veracity of statements of witnesses and defence of Petitioners (accused) in its jurisdiction under Article 226 of the Constitution of India, which is not permissible in law.

3. After their application for discharge was rejected by the Trial Court, the remedy for Petitioners is to contest the said case before the Trial Court and by circumventing all the statutory remedies available to the Petitioners, they have filed present Petition.

4. In view of above, we dismiss the Petition in *limine*.

[SHIVKUMAR DIGE, J.]

[A.S. GADKARI, J.]