

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3028 OF 2022****WITH****INTERIM APPLICATION NO. 2179 OF 2023**

Chirag Arora s/o. H. L. Arora ] ... Petitioner

**V/s.**

1. The State of Maharashtra ]  
2. Sheetal Vasant Thakur ] ... Respondents

Ms. Rebecca Gonsalvez for Petitioner.

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

Ms. Tripti Shetty a/w. Mr.Suresh Jhamble for Respondent No.2.

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

**DATE : 21<sup>st</sup> June 2023.**

**P.C. :**

1. By the present Petition under Article 226 of the Constitution of India and under Section 482 of Criminal Procedure Code, Petitioner, the original accused in F.I.R. No. 0210 of 2021, dated 12<sup>th</sup> April 2021 registered with Yerwada Police Station, Pune, under Sections 376, 376(2)(n), 323, 504, 506 of Indian Penal Code and under Sections, 4, 5(l), 5(n), 6 of The Protection of Children from Sexual Offences Act, 2012 (*for short, "POCSO Act"*) and in F.I.R. No. 0315 of 2021, dated 22<sup>nd</sup> May 2021, registered with

Mujesar Police Station, Faridabad, has prayed for quashing of the said crimes.

2. Record indicates that, the Hon'ble Supreme Court by its Order dated 21<sup>st</sup> February 2022 passed in Writ Petition (Criminal) No. 375 of 2021, filed by Respondent No.2, was pleased to transfer F.I.R. No. 0315 of 2021, registered with Mujesar Police Station, Faridabad to Yerwada Police Station, Pune. The Hon'ble Supreme Court directed that, the investigation shall take place at Yerwada Police Station into the allegations contained in F.I.R. No. 0315 of 2021, together with F.I.R. No. 0210 of 2021.

3. At the outset, Ms.Shetty, learned Advocate appearing for Respondent No.2, on instructions, submitted that, after completion of investigation of present crime police have submitted chargesheet before the Court of competent jurisdiction on 1<sup>st</sup> May 2023.

3.1 Even as per the pleadings of Petitioner in Interim Application No. 2179 of 2023, police have filed chargesheet against the Petitioner in May 2023.

4. Petitioner thus is having a substantive alternate statutory remedy of filing an application for discharge, as contemplated under the provisions of Criminal Procedure Code before the Trial Court, which is numbered as Special POCSO Case No. 441 of 2023.

5. It is the settled position of law and as has been decided in a catena of decisions by Hon'ble Supreme Court, ordinarily the Court will not entertain a Petition under Article 226/227 of the 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 a well-recognized principle which gained judicial recognition that, the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a 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 Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors., reported in (2019) 9 SCC 538.*

6. According to us, availing a statutory remedy, of 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 the 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 the Code of Criminal Procedure otious, by directly approaching this Court under Article 226 of the Constitution of India.

7. The Hon'ble Supreme Court in the case of *Central Bureau of Investigation Vs. Aryan Singh, dated 10<sup>th</sup> April 2023 passed in Criminal Appeal No. 1025-1026 of 2023 (@ SLP (CRL.) NOS. 12794-12795 of 2022)* has held that, the High Court cannot conduct a mini trial for appreciation of evidence on record, while dealing with an application under Section 482 of Cr.PC., as it is a mini trial and consider the applications as if those are against the judgment and Orders of the Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.PC., the Court is not required to conduct a mini trial.

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

9. In view of disposal of Petition, Interim Application No.2179 of 2023 pending therein does not survive and is accordingly disposed off.

[ SHIVKUMAR DIGE, J. ]

[ A.S. GADKARI, J. ]