



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5419 OF 2021

Rajiv Dhurupdeo Chaubey & Anr.

.....Petitioners

Vs.

The State Of Maharashtra

.....Respondent

Mr. Hare Krishna Mishra i/by Adv. Mukesh Gupta for the Petitioners.

Mrs. M.H. Mhatre APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHARMILA U. DESHMUKH, JJ.**

DATE : 3rd OCTOBER, 2023.

P.C.:-

1) At the outset, learned APP submitted that, after completion of investigation of the present crime, the police have submitted charge-sheet.

Petitioners therefore are having substantive alternate remedy under the provisions of Cr.P.C., before the trial Court.

2) It is the settled position of law and as has been decided in catena of decisions by the Hon'ble Supreme Court, ordinarily the Court will not entertain the 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 well recognized principle which gained judicial recognition that,

the High Court should direct party to avail himself of such remedies, one or the 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 Nadargal 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 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 1973 otious, by directly approaching this Court under Article 226 of the Constitution of India.

4) In view of the above and by reserving alternate remedy under the provisions of Cr. P.C. before the trial Court, Petition is disposed off.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)