

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (APL) NO. 1303 OF 2021**

Asif Abdulla Khan

... Applicant

V/s.

The State Of Maharashtra And Anr.

... Respondents

Mr. Rahul S. Kadam for Applicant.

Mr. S. S. Hulke, APP for Respondent No.1-State.

**CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.****DATE : 15th JUNE, 2023.****PC. :**

1. Admittedly, even as per the pleadings of the Applicant, after completion of investigation police have submitted charge-sheet and the same has been numbered as R.C.C. No. 177 of 2021. The said case is pending on the file of learned Judicial Magistrate First Class, Baramati for final adjudication. As the police have submitted charge-sheet, the Applicant is having alternate remedy to file an Application for discharge before the trial Court.

2. 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 an Application under Article 226/227 of the Constitution of India, where the Applicant 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.

3. It is the settled position of law that, at the stage of discharge and/or quashing of the Criminal proceedings while exercising the powers under Section 482 of Cr.PC. and/or under Article 226 of the Constitution of India, the Court is not required to conduct a mini trial. Reliance is placed on a decision of the *Hon'ble Supreme Court in the case of Central Bureau of Investigation Vs. Aryan Singh*, dated 10th April 2023 passed in Criminal

Appeal No. 1025-1026 of 2023 (@ SLP (CRL.) NOS. 12794-12795 of 2022).

4. A bare perusal of pleadings of the Applicant indicates that, the Applicant wants this Court to conduct a mini trial for adjudicating veracity of the prosecution case, which is not permissible in view of the aforesaid principal of law enunciated by the Hon'ble Supreme Court.

5. By reserving the said remedy to file an Application for discharge, Application is disposed off.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)