



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 956 OF 2025

Swapnil Kiran Patil & Ors.

..Petitioners

Vs.

State of Maharashtra & Anr.

..Respondents

Mr. Vinayak Gadekar for Petitioners.

Smt. Prajakta P. Shinde, APP for Respondent No.1-State.

CORAM : A. S. GADKARI AND
RAJESH S. PATIL, JJ.
DATE : 16th JUNE, 2025.

PC:-

1. By the present Petition filed under Article 226 of the Constitution of India, Petitioners are seeking quashing of FIR No.0017 of 2025 lodged under Section 74, 85, 115(2), 351(2), 352, 3(5) of the Bharatiya Nyaya Sanhita, 2023, registered with Mahatma Gandhi Chowk Police Station, Sangli.
2. At the outset, learned APP, on instructions submitted that investigation in the present crime is completed and the police have filed charge-sheet.
3. As the police have filed charge-sheet, Petitioners are having substantive alternate statutory remedy under provisions of the Code of Criminal Procedure/the Bharatiya Nagarik Suraksha Sanhita of filing an Application for discharge before the trial Court.

4. 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 a Petition under Article 226/227 of the Constitution of India, where the Petitioners have 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 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.*
- (vii) *Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors., reported in 2021 SCC OnLine SC 801.*

5. According to us, filing of an Application for discharge before the trial Court is not an onerous remedy and in fact an equally efficacious remedy. The Petitioners cannot be permitted to raise a specious plea calling upon this Court to adjudicate their 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 Petitioners cannot be permitted to make the statutory provisions of Criminal Procedure Code/Bharatiya Nagarik Suraksha Sanhita otious, by directly approaching this Court under Article 226 of the Constitution of India.

6. In view of the above and by reserving the remedy of filing an application for discharge before the trial Court in favour of the Petitioners, Petition is disposed off.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)