

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 46 OF 2025

Mr. Aniket Sanjay Kumbharde	]	
Age : 20 years, Occu. Education,	]	
R/o. Village Nandurdi, Tal. Niphad,	]	
District Nashik.	]	... Petitioner

V/s.

- | | | | |
|----|------------------------------------|---|-----------------|
| 1. | The State of Maharashtra |] | |
| | Through Niphad Police Station, |] | |
| | Nashik Rural. |] | |
| 2. | Mr. Shashikant Balasaheb Khaire |] | |
| | Age : 26 years, Occu. Mobile Shop, |] | |
| | Residing at Village Nandurdi, |] | |
| | Tal. Niphad, District Nashik. |] | ... Respondents |

Mr. Sachin Bhavar for Petitioner.
 Ms. Prajakta P. Shinde, A.P.P. for Respondent No.1-State.
 Ms. Iraa Dube Patil i/b. Jay & Co. for Respondent No.2.

**CORAM : A. S. GADKARI AND
RAJESH S. PATIL, JJ.**

DATE : 23rd June 2025.

JUDGMENT (Per : A. S. GADKARI, J.) :-

1) By the present Petition under Article 226 of the Constitution of India, the Petitioner is seeking quashing of R.C.C. No. 222 of 2023 pending

on the file of learned Judicial Magistrate First Class, Niphad, District Nashik, arising out of CR No. 255 of 2023 dated 22nd June 2023, registered with Niphad Police Station, Nashik Rural, District Nashik, for the offence punishable under Sections 324, 323, 504, 506, 143, 149, 427 of Indian Penal Code.

2) Heard Mr. Bhavar, learned Advocate for Petitioner, Ms. Shinde, learned A.P.P. for Respondent No.1-State and Ms. Patil, learned Advocate for Respondent No.2. Perused record.

3) It is an admitted fact on record that, after completion of investigation, the Investigating Agency has submitted chargesheet. In view thereof, the Petitioner is having substantive alternate statutory remedy by way 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 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.

4.1) 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 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 specious 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.

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 Petitioner, Petition is disposed off.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)

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