

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2714 OF 2024

Rakesh Shyam Singh

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Abhinav Chandrachud a/w Mr. Janay Jain and Ms. Samruddhi Bendbhar i/by Parinam Law Associates for Petitioner.

Mr. Vinod Chate, A.P.P. for Respondent No.1-State.

Ms. Carina Xavier a/w Mr. Jay N. Suryavanshi and Mr. Raj Ambekar i/by Mr. Rahul S. Arote for Respondent No.2.

Mr. Pradip Sawant, Sr.PI., Unit-VI, EOW, Mumbai.

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

DATE : 25th JULY 2025

PC:-

1) Present Petition under Article 226 of the Constitution of India is filed for quashing of C.C. No. 6102203/PW/2023 pending on the file of Metropolitan Magistrate, 61st Court, Kurla, Mumbai, arising out of FIR No. 197 of 2023 dated 14th May 2023, registered with Govandi Police Station, Mumbai and subsequently investigated by the Economic Offences Wing, Unit-VI, Mumbai, bearing EOW C.R. No. 09 of 2024, under Sections 406, 420, 465, 467, 468, 471, 120-B read with 34 of the Indian Penal Code.

2) It is an admitted fact on record that, after completion of investigation, the Investigating Agency has filed charge-sheet. In view thereof, the Petitioners are having substantive alternate remedy by way of filing an Application for discharge before the trial Court.

3) 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.*
- vii) *Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors., reported in 2021 SCC OnLine SC 801.*

4) 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 these statutory provisions of the Code of Criminal Procedure/Bharatiya Nagarik Suraksha Sanhita otiose, by directly approaching this Court under Article 226 of the Constitution of India.

5) In view of the above and by reserving the remedy in favour of the Petitioner of filing an Application for discharge before the trial Court, Petition is disposed off.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)