

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1186 OF 2025**

Devram Kathod Shirose & Ors

... Petitioners

V/s.

The State of Maharashtra & Anr

... Respondents

Ms Shivani Kondekar, for Petitioners.

Ms. M.M. Deshmukh, A.P.P. for Respondent No.1-State.

Mr. Vaibhav Kulkarni, appointed through Legal Aid for Respondent No.2.

Mr. Anil Lad, Dy.S.P. Murbad, Division.

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

DATE : 26th August, 2025.

P.C. :

1) By the present Petition under Article 226 of the Constitution of India, the Petitioners, accused in CR No. 61 of 2025, dated 28th January, 2025, registered with Kalyan Taluka Police Station, Thane (Rural), under Sections 189(2), 191(2), 190, 352, 351(2) of Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are seeking to quash the said crime.

2) Learned A.P.P. on instructions from Mr. Anil Lad, Dy.S.P. Murbad Division, Dist. Thane, submitted that, the investigation of present crime has already been completed and police have filed charge-sheet on 19th August, 2025, before the learned Special Judge at Kalyan and the said case is numbered as Special Case No.432 of 2025.

3) The Hon'ble Supreme Court in the case of *Neeta Singh & Ors. Vs. The State of Uttar Pradesh & Ors., Special Leave to Appeal (Cri.) No. 13578/2024, dated 15/10/2024 reported in MANU/SCOR/121051/2024*, has held that, once the police files charge-sheet, the Application under Section 482 of the Criminal Procedure Code, 1973 and/or the Petition under Article 226 of the Constitution of India, for quashing of FIR becomes infructuous.

3.1) Record further indicates that, the trial Court has already taken cognizance of the said case.

In view of the principles of law enunciated by the Hon'ble Supreme Court in the case of *Neeta Singh (supra)*, the Petitioners having alternate remedy to challenge the Order of taking cognizance by the trial Court.

4) It is the settled position of law and as has been decided in a 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 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 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 Petitioners 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 Petitioners cannot be permitted to make the statutory

provisions of the Cr.PC./BNSS 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 challenging the Order of taking cognizance by the trial Court or 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.)