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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1832 OF 2025**

Shivaling Shankar Aiwale

..... Petitioner

V/s.

The State Of Maharashtra & Anr.

..... Respondents

Adv. Tapan Thatte a/w. Adv. Akshay Dingale i/b. Adv. Vivek Arote for
Petitioner.

Smt. M. M. Deshmukh, A.P.P., for Respondent-State.

H.C. Mr.Dilip Kundalik Jadhav, Akluj Police Station, District Solapur Roral
present.

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

DATE : 10th JUNE, 2025.

PC.:-

1) By the present Petition filed under Article 226 of the
Constitution of India, the Petitioner is seeking quashing of FIR bearing C.R.
No. 762/2023, dated 7th November, 2023 registered with Akluj Police
Station, District Solapur for the offences punishable under Sections 306
read with 34 of Indian Penal Code.

2) It is admitted fact on record that after completion of
investigation, on 24th March, 2025, the police have filed charge-sheet before
the Court of Judicial Magistrate First Class, Malshiras and the same is

numbered as 134/2025.

3) The Hon'ble Supreme Court in case of *Neeta Singh & Ors. vs. The State of Uttar Pradesh & Ors. in Special Leave to Appeal (Crl.) No.(s) 13578 of 2024 dated 15th October, 2024*, has held that, once the charge-sheet is filed, the Petition for quashing of FIR becomes infructuous. As noted earlier, as the police have already filed the charge-sheet, the Petition has become infructuous.

4) There is another facet to the present Petition. As the police have filed the charge-sheet, the Petitioner is having substantive alternate statutory remedy under the provisions of Criminal Procedure Code/Bharatiya Nagarik Suraksha Sanhita, by way of filing an application for discharge before the trial Court.

5) 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 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 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.*

6) 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 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 Criminal Procedure Code/Bharatiya Nagarik Suraksha Sanhita otious, by directly approaching this Court under Article 226 of the Constitution of India.

7) 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.)