

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 2095 OF 2025**

Shital Denis Barnad

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Abhishek Kulkarni a/w. Mr. Sagar Wakale & Mr. R.S. Pere for Petitioner.
Smt. M.M. Deshmukh, A.P.P. for Respondent-State.
(i) IO/PI. Mr. H.S. Gavali and (ii) PSI Mr. R.K. Chavan, Kandivali Police Station, Mumbai, present.

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

DATE : 1st July 2025.

P.C. :

1) By this Petition under Article 226 of the Constitution of India, the Petitioner is seeking quashing of Special Case No. 419 of 2024 pending on the file of learned Special Judge (POCSO Act), Dindoshi, Mumbai, arising out of CR No. 0271 of 2024, dated 5th April 2024, registered with Kandivli Police Station, Mumbai, for the offence punishable under Sections 323, 506(2) read with 34 of The Indian Penal Code (I.P.C.) and Sections 8 & 12 of The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Section 75 of The Juvenile Justice (Care and Protection of Children) Act, 2015.

2) Heard Mr. Kulkarni, learned Advocate for Petitioner and Smt. M.M. Deshmukh, learned A.P.P. for Respondent Nos.1 to 3-State. Perused record produced before us.

3) It is an admitted fact on record that, after completion of investigation of present crime, 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 her 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 / 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 Petitioner, Petition is disposed off.