

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 4203 OF 2025**

- | | | | |
|-------------|----------------------|---|-----------------|
| 1. | Sanjeev Kumar Singh |] | |
| 2. | Pinki Kumari Singh |] | ... Petitioners |
| V/s. | | | |
| 1. | State of Maharashtra |] | |
| 2. | Pramodprasad Semalty |] | ... Respondents |

Mr. Vishal Krishna a/w Mr. Shrayash Shirke i/by Law Care for Petitioners.

Mr. Ajay S. Patil, A.P.P. for Respondent No.1-State.

Mr. Shriram Padwal, A.P.I., Kasarvadavli Police Station, Thane, present.

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

DATE : 6th AUGUST 2025

PC.:-

1) By this Petition under Article 226 of the Constitution of India, the Petitioners have prayed for quashing of FIR No. 0432 of 2023, dated 29th December 2023, registered with Kasarvadavli Police Station, Thane, for the offence punishable under Sections 406, 420, 465 and 467 read with 34 of the Indian Penal Code (IPC).

2) At the outset, Mr. Patil, learned A.P.P., on instructions from Asst. Police Inspector Mr. Padwal, attached to Kasarvadavli Police Station, Thane, submitted that, after completion of investigation of the present crime, the police have filed charge-sheet on 28th June 2025 in the Court of learned 11th

Judicial Magistrate First Class, Thane and it is numbered as R.C.C. No. 3071 of 2025. It is submitted that, the trial Court has taken cognizance of the said case.

3) In view of the fact of filing of charge-sheet and taking of cognizance by the trial Court, present Petition for quashing of F.I.R. has become infructuous.

3.1) 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(s). 13578 of 2024, dated 15th October 2024 : MANU/SCOR/121051/2024*, in para Nos. 3, 4 and 5 has held as under:

*“3. We have no doubt in our mind about the contours of jurisdiction of a high court when a challenge is presented asserting that the impugned FIR ought to be quashed on the settled parameters. However, sight cannot be lost of the settled legal position that it is entirely within the discretion of a high court whether to interfere or not when other remedies are available. If during the pendency of a writ petition under Article 226 of the Constitution before a high court where an FIR is challenged the investigation is completed and charge-sheet filed, in pursuance whereof the competent criminal court takes cognizance of the offence, the court would be disabled in proceeding with the writ petition owing to a judicial order having intervened. We can profitably refer to the decision of the bench of three Judges of this Court made on a reference in *Radhey Shyam vs. Chhabi Nath* (2015) 5 SCC 423. While disapproving the view expressed in *Surya Dev Rai vs. Ram**

Chander Rai (2003) 6 SCC 675, it was held that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 is distinct from jurisdiction under Article 226 (para 29 of Radhey Shyam). We may also note from such decision that upon considering decisions of high authority, a principle of law was laid down that challenge to judicial orders could lie by way of an appeal or a revision or under Article 227 of the Constitution and not by way of a writ under Articles 226 and 32.

4. *The underlying reason why judicial orders are not amenable to challenge in a writ petition under Article 226 of the Constitution seems to be that such orders cannot be legitimately claimed to have been passed by the presiding officer of a court in breach or violation of a fundamental right, any right conferred by the Constitution or a statutorily conferred right, which could be corrected by issuance of a writ of certiorari in exercise of high prerogative writ jurisdiction of the high courts. After all, should any right of a person be infringed as a consequence of a judicial order, the laws provide for the fora where such order is amenable to challenge and it is such fora, which ought to be approached for redress of one's grievance. This position flows from Constitution Bench decisions of this Court in Naresh Shridhar Mirajkar & Ors. vs. State of Maharashtra AIR 1967 SC 1 and Rupa Ashok Hurra vs. Ashok Hurra (2002) 4 SCC 388, as well as the decision of a bench of three Judges in Sadhana Lodh vs. National Insurance Co. Ltd. (2003) 3 SCC 524.*

5. Although Radhey Shyam (supra) dealt with judicial orders passed by civil courts, there cannot be a different standard for judicial orders passed by criminal courts. If a judicial order passed by a civil court cannot be challenged in a writ petition under Article 226 of the Constitution, a fortiori, a judicial order passed by a criminal court cannot also be challenged in a writ petition under Article 226.”

3.2) In view of the ratio laid down by the Hon’ble Supreme Court in the case of *Neeta Singh (supra)*, the Petitioners are at liberty to challenge Order of taking cognizance by the trial Court by adopting appropriate remedy under the law, if so advised.

4) There is another facet to the present Petition.

4.1) In view of the fact that the charge-sheet has now been filed, the Petitioners are having substantive alternate statutory remedy by way of filing Application(s) for discharge before the trial Court, as may be permissible under the BNSS.

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 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.

5.1) 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.*

6) 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 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.

7) Though this is a settled principle of law, learned counsel for the Petitioners continued with his tirade by submitting that, we ‘must’ hear him on merits. Learned Advocate for the Petitioners by relying on the decision of the Hon’ble Supreme Court in the case of *A.M. Mohan Vs. State Represented by SHO and Another*, 2024 SCC OnLine SC 339, tried to persuade this Court by submitting that, this Court ‘must’ consider the merits of the case. We are not in agreement with the said submission of the learned Advocate for the Petitioners and are also unable to accede to his insistence to consider the defence of the Petitioners. Perusal of the decision in the case of *A.M. Mohan (supra)*, indicates that, it does not lay down such a ratio that, the High Court ‘must’ scrutinize each and every case on merits by conducting a mini-trial. It is by now a well settled position of law that, while exercising jurisdiction under Article 226 of the Constitution of India and/or Section 482 of the Cr.P.C., the High Court cannot conduct a mini-trial.

7.1) Be that as it may. According to us, the case in hand is squarely covered by the ratio laid down by the Hon’ble Supreme Court in the case of *Neeta Singh (supra)*.

8) In view of the above and by reserving the remedy in favour of the Petitioners, either to challenge the Order of taking cognizance by the trial Court or to file an Application(s) for discharge before the trial Court, Petition is disposed off.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)