

lgc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.305 OF 2024

Rahul Suresh Rohra : Petitioner.

Versus.

State of Maharashtra : Respondent.

Mr. Aameer Kale a/w Ms.Alisha Patel i/by A. K. Legal & Associates for the Petitioner.

Mr. Sukanta Karmakar, APP for the Respondent/State.

CORAM : ASHWIN D. BHOBE, J.

DATED : 09 APRIL 2026

PC:-

1. At the outset, Mr. Aameer Kale, learned Advocate for the Petitioner, seeks leave to amend the prayer clause. Mr. Sukanta Karmakar, learned APP for the Respondent/State, does not oppose the request made by Mr. Aameer Kale. In view of the no objection, leave is granted. The amendment shall be carried out forthwith.

2. Heard Mr. Aameer Kale, learned Advocate for the Petitioner and Mr. Sukanta Karmakar, learned APP for the Respondent/State.

3. Though, the Petitioner has sought several reliefs in the present Petition, Mr. Aameer Kale, learned Advocate for the Petitioner, on instructions from the Petitioner, has restricted this Petition to the relief in prayer clause 16(e), which reads as follows :-

“16(e) Issue an order or direction to set aside and quash order dated 29.08.2022 & decide the Discharge Application filed by the Petitioner on merits.”

4. Mr. Aameer Kale, learned Advocate for the Petitioner, submits that the Application dated 26th December 2012, filed by the Petitioner (Accused No. 2) jointly with Accused No. 1, seeking discharge under Section 239 of the Criminal Procedure Code, was dismissed by the Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai (hereafter “Magistrate”), by order dated 29th August 2022 (hereafter “impugned order”), passed in Case bearing CC No. 1606/PW/2012, which is reproduced verbatim as follows:

“Acu no.(1) is on NBW hence appln cannot be heard in his absence. As a result, appln is rejected.”

5. The grievance of Mr. Aameer Kale, learned Advocate for the Petitioner, is that the Application seeking discharge filed by the Petitioner could not be dismissed on the ground of the absence of Accused No.1, especially when the Petitioner was present and contesting the proceedings. He submits that Petitioner’s case rests on a different footing than that of the Accused No. 1. He submits that the impugned order is illegal. He submits that the request made by the Petitioner in the Application dated 26th December 2012 seeking discharge was

required to be considered in relation to the Petitioner. He submits that, to date, the charge has not been framed in CC No. 1606/PW/2012. He, therefore, requests the setting aside of the impugned order and further seeks directions to the Magistrate to consider the Application dated 26th December 2012 on its merits qua the Petitioner.

6. Mr. Sukanta Karmakar, learned APP for the Respondent/State, in all fairness, submits that the Application dated 26th December 2012 was required to be considered in the context of the Petitioner and ought not to have been dismissed on the ground of the absence of Accused No.1. He, therefore, concedes that the Application dated 26th December 2012 filed by the Petitioner can be considered in respect of the Petitioner.

7. Perused records.

8. Although the Application dated 26th December 2012 seeking discharge was filed jointly by the Petitioner and Accused No.1, the Magistrate was not right in dismissing the Application in relation to the Petitioner. The impugned order does not record any reason for not entertaining the Application in respect of the Petitioner. The absence of Accused No.1 cannot be a ground to dismiss the Application in respect of the Petitioner. The impugned order has resulted in the denial of a right available to the Petitioner under the Code of Criminal Procedure, 1973.

9. Be that as it may, the impugned order is not sustainable in relation to the Petitioner (Accused No.2) and, as such, is quashed and set aside as against the Petitioner.

10. Mr. Aameer Kale, learned Advocate for the Petitioner, states that the Petitioner be granted liberty to file a fresh and proper Application seeking discharge in CC No. 1606/PW/2012, limited to the case of the Petitioner (Accused No. 2). Mr. Sukanta Karmakar, learned APP for the Respondent/State, submits that the course suggested by the Petitioner would be the proper recourse.

11. In view of the above, liberty is granted to the Petitioner (Accused No.2) to file an Application seeking discharge in Case bearing CC No.1606/PW/2012, pending before the Magistrate. Mr. Aameer Kale submits that the Application seeking discharge will be filed by the Petitioner (Accused No.2) within four weeks from today. If such an Application is filed within four weeks from today, the Magistrate to consider the same on its own merits and strictly in accordance with law.

12. With the aforesaid directions, Criminal Writ Petition No.305 of 2024 is disposed of.

13. There shall be no order as to costs.

(ASHWIN D. BHOBE, J.)