

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Revisional Jurisdiction**  
**Appellate Side**

Present:

**The Hon'ble Justice Jay Sengupta**

**C.R.R. 23 of 2022**

**Uttam Maity & anr.**

**Vs.**

**State of W.B. & anr.**

|                     |                          |
|---------------------|--------------------------|
| For the Petitioners | : Mr. Gouranga Kumar Das |
|                     | : Mr. Kapil Ch. Sahoo    |
|                     | : Mr. Kanailal Dutta     |
|                     | : Mr. S. K. Mondal       |
|                     | ...for the petitioners   |

Heard on: 9<sup>th</sup> February, 2022

Judgment on : 9<sup>th</sup> February, 2022

**The Court:**

This is application praying for quashing of a proceeding in which a charge-sheet was submitted under Sections 341 and 376D of the Indian Penal Code and Sections 6 and 10 of the POCSO Act.

Supplementary affidavit filed on behalf of the petitioners is taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the accused in this case. There is a

long-standing dispute between the adverse parties. In fact, the petitioners are related to the 15 years old victim girl. Several cases were earlier filed from the petitioners' end against the relatives of the opposite party no.2. A counter case was also filed by the other side. The present case has been foisted against the accused only to wreak vengeance. No prima facie case is made out as would be evident from a plain reading of the First Information Report and the charge-sheet. The petitioners are absolutely innocent and have not committed the offences alleged.

I have heard the submissions of the learned counsels appearing on behalf of the petitioners and have perused the revision petition including the First Information Report and the charge-sheet appended thereto.

From the supplementary affidavit filed on behalf of the petitioners, it appears that by an order dated 17.12.2021 passed by a Division Bench of this Court in CRR No. 8114 of 2021, an application for anticipatory bail filed by the petitioners and some others was dismissed by this Court. This Court was pleased to hold that there was prima facie material disclosing involvement of the petitioners for subjecting the minor to a gang rape. After rejection of the prayer for anticipatory bail, a warrant of arrest was admittedly issued against the petitioners.

As would be evident from a plain reading of the First Information Report, which was lodged by an independent villager, the minor victim girl was accosted by all the accused and thereafter taken to a jungle where the accused nos. 1 and 2 committed rape upon her. Therefore, all the accused could be charged with the offence of gang rape.

After going through the First Information Report and the charge-sheet, it appears that a prima facie case is made out against the petitioners under Section 341 and 376D of the Penal Code and Sections 6 and 10 of the POCSO Act.

Animus between two parties is a double edged weapon. It may either give rise to a false implication or be a strong motive for the commission of an offence. In the present case, the purported existence of previous litigations between the parties do not help the present petitioners any bit.

Moreover, whether the petitioners are actually guilty of such offences is clearly a disputed question of fact that can be decided only during trial.

In view of the above, I do not find any merit in this application.

Accordingly, the same is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

**(Jay Sengupta,J.)**