

8.6.2026
26
sb

CRR 1438 of 2026

**Uttam Kumar Rudra alias Uttam Rudra
Vs.
The State of West Bengal & Anr.**

Mr. Moloy Roy
Ms. Puja Agarwal
Ms. Parichita Roy

...for the Petitioner

The petitioner herein is aggrieved with the order dated 26.2.2026 by which the court below rejected the petitioner's prayer for investigation made through an application under Section 175(3) of the BNSS. In the said application, the petitioner herein has alleged that taking advantage of petitioner's temporary absence and the pendency of the criminal appeal, the opposite party on 2.11.2025 accompanied by several unknown persons and aided by certain police personnel, forcibly broke open the locks of the petitioner's residence and fixed their own lock and also removed the installed CCTV camera and illegally trespassed into the premises and also dispossessed the petitioner illegally from the premises.

Learned court below received the said prayer with the complaint filed under Section 175(3) of the BNSS on 25.11.2025 and on perusal of the documents, the court below sought for a preliminary enquiry report by the Officer-in-charge, Berhampore Police Station. On receipt of the report from the concerned police station, the court below made specific observation that the proposed accused,

Tanipa Majumder entered into her matrimonial house on the strength of a judicial order passed by the competent court, though said order is also under challenged at the instance of the present complainant. Therefore, the court below was of the view that it would not be proper to comment on the legality/illegality of the alleged act of the proposed accused person, however he concluded that no cognizable offence could be made out in the facts and circumstances of the case.

Being aggrieved by the aforesaid order, learned counsel for the petitioner submits that in view of the law laid down in **Lalita Kumari Vs. Government of Uttar Pradesh (2014) 2 SCC 1**, the registration of an FIR is mandatory, where the information discloses commission of a cognizable offence. The police authorities have acted in a wholly partisan and biased manner by not registering the FIR and the order is contrary to the law laid down by the Hon'ble Supreme Court in **Sakiri Vasu Vs. State of Uttar Pradesh (2008) 2 SCC 409**, wherein it was held that the Magistrate is vested with ample power to ensure proper investigation and is duty bound to apply his judicial mind while exercising such power.

He further submits that in the instant case, the allegation is proposed accused has broken the lock of the house and forcibly entered into the house of the petitioner, which discloses a cognizable offence. He further submits that the proposed accused has wrongly claimed the said

house as her matrimonial house or shared household. He further submits that the order passed in a separate proceeding initiated under the Protection of Women from Domestic Violence Act, 2005 cannot have any impact upon the present proceeding and furthermore, the said order has not authorized the proposed accused to break open the padlock forcibly and to enter into the premises illegally or to dispossess the lawful owner. Therefore, the court below was not justified in reaching to a conclusion that no criminal offence is made out. Therefore, he has prayed for setting aside the impugned order.

I have considered the submissions made on behalf of the petitioner and I have also gone through the order passed by the learned Magistrate while adjudicating an application under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 passed in Misc. case no. 22 of 2025 dated 22.9.2025. The relevant portion of the said order dated 22.9.2025 may be reproduced below:-

“the respondents are hereby restrained from repeating any act of domestic violence either physical or mental upon the aggrieved person. Aggrieved person is at liberty to reside in her matrimonial house being the share household. Respondents are hereby restrained from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household. Inspector-in-charge, Berhampore Police station is directed to give the aggrieved person all required assistance as and when required for her peaceful possession in her matrimonial house. Respondent no. 1 is further directed to make payment in total of 5000/- per month as monthly monetary relief for the aggrieved person within 10th day of every month along with a portion of arrear amount. The aggrieved person is entitled to execute the order if the order has not duly complied with by the respondents.”

From the aforesaid order, it is clear that the concerned Magistrate in seisin of the said Misc. case being no. 22 of 2025 had given liberty to the proposed accused to reside in her matrimonial house being the shared household and the petitioner herein are also restrained from dispossessing her and in order to execute the order, he also directed the Inspector-in-charge, Berhampore Police station to give the aggrieved person all required assistance as and when required for her peaceful possession in her matrimonial house. The petitioner herein has also stated in his letter of complaint that on 2.11.2025, the proposed accused aided by certain police personnel had entered into the petitioner's residence.

In view of the aforesaid conspectus of the case, I find that the court below had committed no mistake in passing the impugned order dated 26.2.2026 and the said order does not suffer from any perversity or illegality, which calls for interference by this court.

In view of above, CRR 1438 of 2026 thus stands dismissed. However, this order will not preclude the petitioner to seek his remedy, if any, in the aforesaid proceeding initiated under the Act of 2005.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)