

G.R. Case No. 238 of 2024
Reg. No. 22 of 2025
JO Code WB 00979

Order No. 16, dated 08.08.2025

Today is fixed for passing order with respect to the petition filed by the Ld. Advocate for the accused u/s 239 CrPC.

Heard both sides on the previous date.

Case diary is produced, perused and returned back.

Now the record is taken up for passing order.

All the five accused persons on C/B are present by filing hazira along with their Ld. Advocates.

Ld. Advocate for the prosecution is also present.

Ld. Advocate for the three accused persons namely, Anusha Khawas, Ankita Khawas and Rohan Pradhan submitted that the allegations of the complainant has no basis and is totally false. The petitioners have contended that their names do not find mentioned in the statement of witnesses recorded u/s 164 CrPC nor in Section 164 CrPC and that the case is the result of a counter-blast to a criminal case lodged earlier by one of the accused, who is the victim in that case against the complainant's husband. They alleged malice and personal vendetta. Therefore, he submitted that the allegations against the accused persons are unwarranted and hence the accused persons are liable to be discharged from the present case.

The Ld. PP has opposed the application submitting that although the names of the petitioners are not specifically mentioned in the witness statements, all the witnesses have consistently stated that the main alleged victim was accompanied by three to four other persons during the incident. The prosecution further points out that the petitioners were apprehended based on the investigation, which included seizure of CCTV footage from the spot. It is submitted that such CCTV footage is a vital piece of evidence and will be played and proved during trial, and at this stage, the sufficiency of materials for conviction is not to be assessed, only a prima facie case is to be seen.

Therefore, after carefully considering the discharge petition, the submission made by the both sides, the case diary, the statements recorded under section 161 and 164 CrPC, and the seizure list including the CCTV footage, it is to be noted that it is true that the petitioners names are not specifically spelt out in statements of witnesses. However, the statement u/s 164 CrPC do indicate that during the incident, the prime accused was accompanied by three to four other persons who also took part in the assault on the complainant and her husband. The CCTV footage seized from the shop premises is a material evidence which prima facie corroborates the prosecution's claim of the presence of other persons along with prime accused, whether such footage conclusively establish the petitioners involvement is a matter to be decided at the stage of evidence, not at this stage.

It is settled law that at the stage of considering discharge, the Court is only to see whether there exists a prima facie case and not to meticulously appreciate evidence or evaluate the sufficiency thereof for conviction. Even strong suspicion found on materials in the CD is sufficient to frame charges. The plea of the case being a counter-blast or motivated by malice is a defence plea which cannot be adjudicated without full trial.

Hence, it is,

ORDERED

In the view of the above discussion, I find that there is prima facie materials on record connecting the petitioners with the alleged offences, and the prosecution case cannot be said to be groundless at this stage.

Hence, the discharge petition filed by the three accused persons is hereby rejected on contest.

Fix **19.09.2025** for appearance and framing of charge.

D & C by me,

Judicial Magistrate,
Darjeeling.

Judicial Magistrate,
Darjeeling.