

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 3587 of 2021

**Petitioner :-** Darshan Gupta

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Ashwini Kumar Ojha

**Counsel for Respondent :-** G.A.

**Hon'ble Anjani Kumar Mishra,J.**

**Hon'ble Syed Aftab Husain Rizvi,J.**

The contention of the counsel for the petitioner who has challenged the first information report dated 14.03.2021 giving rise to case crime no. 153 of 2021 under Section 2/3 Gangster Act at Police Station Sipri Bazar, District Jhansi is that as per the gang-chart, the provisions of Gangster Act have been invoked against the petitioner on the basis of solitary case under Section 376 IPC. This shows totally non application of mind, inasmuch as the petitioner was never charge-sheeted under Section 376 IPC in the said criminal trial no.404 of 2020. The charge under Section 376 IPC was against the co-accused.

In view of the submission made on the previous occasion, the record of the Criminal Appeal Defection No.350 of 2021 (*Darshan gupta vs.State of U.P. and another*) was summoned. This appeal arise out of trial no.404 of 2020 aforementioned.

We have perused the said record and find that the argument made by the counsel for the petitioner is factually correct.

Let learned A.G.A. to file a counter affidavit within 10 days.

Counsel for the petitioner shall file rejoinder affidavit within three days thereafter.

List for admission thereafter.

Until further orders, petitioner shall not be arrested consequent to the impugned FIR dated 14.03.2021.

**Order Date :-** 2.6.2021

C. MANI