

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. Petn. No. 34 of 2024

1. The State of Tripura

.....*Petitioner*

-V E R S U S-

1. Sadhan Kumar Jamatia @ Karan and Another

..... *Respondents.*

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. Raju Datta, P.P.
For Respondent(s)	:	None.

FINAL ORDER

13.09.2024

Heard Mr. R. Datta, learned Public Prosecutor appearing for the petitioner-State. None appears for the respondents.

[2] This is a petition filed under Section-528 BNSS for setting aside/quashing the order dated 17.08.2024 passed by the learned Special Judge, Gomati Judicial District, Udaipur R. K. Pur Women P.S. No.43 of 2024 whereby the prayer of prosecution to conduct Test Identification Parade was rejected.

[3] The facts in brief are that on 14.08.2024, O/C RK Pur Women PS registered FIR vide case No.2024 WRP 043 dated 15.08.2024 under Section 70(2) of BNS & Section 4 of POCSO Act against Karan Jamatia and 3 other on the basis of complaint of the victim that on 14.08.2024 at about 1500 hours when the complainant victim girl was going to her friend's house at Kuwaimura at that time one accused person namely Karan Jamatia and 3 other unknown persons came and dragged her in the nearby jungle and all the accused persons forcibly committed rape upon her. During investigation the Investigation Officer arrested 2(two) accused persons and on 17.08.2024 the IO submitted an application before the learned Special Judge, Gomati District, Udaipur for allowing to conduct Test identification Parade of the

accused persons but the learned Special Judge without considering the rejected the application of IO to conduct TI Parade without considering the fact that TI Parade can be conducted by following the guidelines laid down by the Hon'ble High Court of Rajasthan in "Suresh Vs. State of Rajasthan" reported in (2022) LiveLaw (Raj) 80.

[4] Hence the present petition is preferred by the petitioner-State.

[5] Mr. R. Datta, learned P.P. appearing for the petitioner-State has submitted that the impugned order is absolutely illegal, wrong, unjust, improper, materially irregular, perverse and is liable to be set aside. By way of misreading and improper appreciation of record has caused serious prejudice to the petitioner by closing the evidence of prosecution by the impugned order dated 17.08.2024.

[6] While passing the order dated 17.08.2024 whereby the application of Investigation Officer for conducting Test Identification Parade was rejected failed to consider that there are several methods for conducting Test Identification Parade of accused persons by victim without direct confrontation or coming face to face via Video Conferencing or photo identification. The Order dated 17.08.2024 did not expressly mention or state any grounds for rejecting application of Investigation conducting Test Identification Parade.

[7] While passing the order dated 17.08.2024 relied upon the judgment of Hon'ble High Court of Rajasthan in "Suresh vs. State of Rajasthan" reported in (2022) Live Law (Raj) 80 wherein the Hon'ble High Court of Rajasthan has laid down several guidelines to be followed while dealing with the matter of conducting Test Identification Parade in cases under POCSO Act. However, on perusal of the said judgment and the guidelines laid down thereunder, it is evident that no express/blanket bar has been found to have been laid in conducting TI Parade of accused where the victim is below 18 years of age, rather the Hon'ble High Court of Rajasthan has laid down certain guidelines to be followed in POCSO Act cases while conducting TI Parade to safeguard the victim/witness below 18 years of age.

[8] The investigating officer is ready to follow the guidelines and conduct the TI Parade of the accused persons by the victim by observing all the precautions as laid down by Hon'ble High Court of Rajasthan in "Suresh Vs. State of Rajasthan" reported in (2022) Live Law (Raj) 80 so that the victim does not come face to face with the accused persons and also take every other precaution to safeguard the interest of the victim. The TI Parade of the accused persons is very essential for proper investigation of the case to find out the real truth.

[9] In view of above, this Court is of the opinion the due procedure of Test Identification Parade has not been followed by the learned Court below which needs to be followed as per procedure. For the purpose of reference, the cases under POCSO Act, the guidelines are extracted hereunder:

(a) In every case where the witness/ victim is a child below the age of 18 years TIP proceedings shall be held in one of the court rooms during the course of trial. No pre-trial identification would be mandatory.

(b) Installation of CCTV cameras, computer screen or mechanism in a room where TIP proceedings will be conducted so that the child witness is not confronted face to face with the accused participating in the TIP proceedings.

(c) Person accused of the offence and the others having some resemblance with the features of accused; who may be participating in the TIP will be explained the procedure and the manner of TIP proceedings to be held in a case of child witness.

(d) The child and the accused should not be at one place in the court room, it must be separate, so that he or she may not be exposed directly or confronted.

(e) The presiding officer of the court shall show the live streaming of accused standing with other persons in a separate area; to the victim on the monitor/screen. The presiding officer then ask the victim to identify the accused among the others standing with him. As soon the process is done, the screen shall be shut down. The presiding officer then note down the response as well demeanor of the witness in the case file.

(f) So far as possible only female officers may be deployed wherever the witness happens to be a girl child for the purposes of identifying the accused person.

(g) No police official shall be seen in a uniform right from the stage when the child enters the TIP Room and till he/she leaves the premises after the completion of TIP proceedings. The child witness shall be entitled to accompany his parents/guardians or any of his close relatives so as to make

the child comfortable before participating in identifying the accused in the Test Identification Parade.

(h) The child friendly atmosphere will be created in a room where the child is brought first and the stay of the child will be made most comfortable so that the child finds the place to be attractive and conducive to his/her requirements.

(i) Necessary arrangements for light refreshment to the general liking of children below the age of 16 years shall also remain in place to keep the mood of the child upbeat."

[10] To the present facts and circumstances, the Hon'ble Apex Court in *P. Sasikumar v. State represented by the Inspector of Police*, reported in (2024) SCC online SC 1652 has observed as under:

"13. After considering the peculiar facts of the present case, we are of the opinion that not conducting a TIP in this case was a fatal flaw in the police investigation and in the absence of TIP in the present case the dock identification of the present appellant will always remain doubtful. Doubt always belongs to the accused. The prosecution has not been able to prove the identity of the present appellant i.e. A-2 beyond a reasonable doubt.

The relevance of a TIP, is well-settled. It depends on the fact of a case. In a given case, TIP may not be necessary. The non conduct of a TIP may not prejudice the case of the prosecution or affect the identification of the accused. It would all depend upon the facts of the case. It is possible that the evidence of prosecution witness who has identified the accused in a court is of a sterling nature, as held by this Court in the case of *Rajesh v. State of Haryana*, (2021) 1 SCC 118 and therefore TIP may not be necessary. It is the task of the investigation team to see the relevance of a TIP in a given case. Not conducting TIP in a given case may prove fatal for the prosecution as we are afraid it will be in the present case."

[11] Mere conducting of TIP would not affect any individual's right and would not raise any prejudice but that would support the case of the investigation and also a support to the victim. In that view of the matter, this Court is of the opinion that ends of justice would be met to the victim, if the petition is allowed by setting aside the judgment order as passed by the learned Court below. Accordingly, the same is ordered.

[12] As such, the petition stands allowed and thus disposed of. As a sequel, miscellaneous application, pending if any shall stand closed.

T. AMARNATH GOUD, J

Suhanjit