

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-3026-2017

Date of decision: 30.8.2017

Parvesh @ Ashmad

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Balkar Singh, Advocate for the petitioner

JITENDRA CHAUHAN, J.

By filing the present revision petition, the petitioner has challenged the order dated 10.7.2017 passed by learned Additional Sessions Judge, Sonipat vide which the application filed by him for issuing direction to carry out DNA Test on the accused-petitioner and new born baby of the prosecutrix, was dismissed.

It is contended that learned trial Court has wrongly dismissed the application by ignoring the sufficient material on record. In fact the petitioner has been falsely implicated in the instant case by the family of the complainant in collusion with the police for ulterior motives. He further submits that it is not a case, wherein the petitioner is the only accused. There are two other accused named in the First Information Report for committing rape. To prove his complicity in the commission of crime, the DNA profiling of the petitioner with the female child born to the prosecutrix is necessary. Therefore, the petitioner filed

the application for conducting DNA, which was dismissed. He further states that decision on the application does not prejudice the case of the prosecution, rather, it affects the petitioner's case, in case, he is found to be guilty.

Heard.

Hon'ble Orissa High Court in **Bhima Bhoi Vs. State of Orissa**, 2016 Cri.L.J. 1708 in para No. 14 has held as under:-

“14. Coming to the contention of the learned counsel for the appellant regarding conducting of DNA test to establish the paternity of the child, it is the settled principle of law that DNA test in a matter relating to paternity of the child should not be directed by the Court as a matter of course or in a routine manner, whenever such a request is made. In this case, nobody has made any request for conducting such test. Moreover, the paternity of the child is not the issue in this case rather the issue is whether the appellant raped the victim on number of occasions.”

Hon'ble Calcutta High Court in **Sabur Hossain Biwas Vs. State of West Bengal and others**, rendered in CRR No.3394 of 2007 in para No.8 has held as under:-

“Even it is assumed for the sake of argument that the DNA test becomes favourable to the petitioner that would not amount to absolving him of the charge

under Section 376 of the IPC because the trial Court will have to consider the charge on the basis of the evidence of the prosecutrix and of other witnesses, if any and if the evidence of the prosecutrix and/or of any other witnesses supporting in the prosecutrix are found by the trial Court sufficient to indicate that offence under Section 376 of the IPC has been committed by the petitioner then the result of the DNA test by itself would be of no avail. Contra, if the oral evidence of the witnesses including that of prosecutrix are found to be not sufficient to hold the petitioner guilty of the charge of rape, then the result of the DNA test even if it would go to establish the paternity will equally be of no avail. Therefore it is not a deserving case where DNA test should be held.”

There is no delay in lodging the FIR. As per record, the petitioner along with co-accused raped the prosecutrix, who is a minor girl. Challan has been filed against all the three accused under Section 376(D), 506 IPC and Section 6 of POCSO Act.

It would not be out of place to mention here that the prosecutrix has fully supported the prosecution version and this application has only been filed to fill up the lacunae and to prolong the trial. This Court is not to adjudicate upon the parentage of the child.

Rather, the verdict is to be given on the allegations of sexual assault, if

any. Even otherwise, the victim or the prosecution has nowhere claimed that she had conceived from the loins of any of the accused. There are allegations with regard to rape only. Therefore, in the given facts and circumstances and in view of the ratio of law laid down in **Bhima Bhoi's case (supra)** and **Sabur Hossain Biwas case (supra)**, there is no necessity for getting the DNA test of petitioner/accused and new born baby of the prosecutrix. The learned trial Court after analyzing the facts and appreciation of law on the issue has rightly dismissed the application of the petitioner.

In the light of the above facts and circumstances, this Court finds no infirmity or illegality in the impugned order dated 10.7.2017. Accordingly, the present revision petition being devoid of merit is dismissed in limine.

30.8.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No