

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 2222 of 2019**

- Rakesh Kumar Sahu S/o Shri Vinod Kumar Sahu, aged 23 years, R/o village Jhalkhamariya, P.S. - Mahasamund, District - Mahasamund (C.G.)

----Petitioner**Versus**

- State of Chhattisgarh Through : P.S. Mahasamund, District Mahasamund (C.G.)

---- Respondent

For Petitioner	:	None
For Respondent/State	:	None

Hon'ble Smt. Justice Rajani Dubey**Order on Board****01/10/2019**

01. This is an office reference.
02. The matter is listed for orders on PUD dated 16.09.2019 sent by Special/Sessions Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Mahasamund (C.G.) regarding information of non-compliance of this Court's order dated 02.08.2019 passed in CRR No.36/2019.
03. Perused the PUD.
04. On 02.08.2019, this Court allowed the application of applicant for DNA test of the alleged child born out of the incident and directed the trial Court to assign the task of the DNA test to the concerned Superintendent of Police. By the PUD under

consideration, it has been informed that the adoptive parent did not agree to give blood sample of the alleged child.

05. Applicant Rakesh Kumar Sahu is facing trial before the learned trial Court and this Court allowed his application of DNA test of the alleged child born out of the incident.

06. While disposing the PUD under consideration, this Court deem it appropriate to refer the judgment of Hon'ble Supreme Court in the matter of **Narayan Dutt tiwari V. Rohit Shekhar and Another**¹ wherein, it has been held that where this type of unwillingness for DNA test is shown, the trial Court can take police assistance and use reasonable force if blood sample is not willingly given.

07. This Court, vide order dated 02.08.2019, directed that the concerned Superintendent of Police shall supervise the whole procedure of DNA test, meaning thereby if some unwillingness is shown for DNA test, he can use reasonable force for compliance of the Court's order, but the concerned Superintendent of Police did not follow this Court's order and simply said that the adoptive parent do not agree for DNA test of the child. This Court's order nowhere speaks that SP Mahasamund has to take prior approval. In fact, he was deputed in anticipation that such a situation may arise while taking the blood sample. This Court had only directed that no inconvenience should be caused to the child and adoptive parent. Even after that, the concerned SP did not follow the Court's order.

07. Now, this Court, in view of **Narayan Dutt** (supra), direct the concerned Superintendent of Police to go to the residence of the child along with Civil Surgeon of Mahasamund and pathologist in

1 (2012) 12 SCC 554

civil dress, the date of which shall be fixed by the trial Court, and the pathologist would take the blood sample of the child in confidentiality in their presence for DNA profile test and the said sample shall be sent in a proper seal immediately to the Centre for DNA Fingerprinting and Diagnostic (CDFD), Raipur for analysis, by a special messenger/Investigating Officer of the case. After the test of DNA profile, the centre for DNA Fingerprinting and Diagnostic (CDFD), Raipur will forward the report of the analyst as soon as possible by a special messenger in a sealed cover to the trial Court. The trial Court is also directed to take blood sample of the accused for DNA profile. It is also directed that Superintendent of Police, Mahasamund can use reasonable force if blood sample is not given willingly. The trial Court may also impose additional conditions for completion of DNA test procedure and fix the date in all this procedure.

08. Registry is directed to send the copy of this order to the concerned trial Court, District Judge, Superintendent of Police and Civil Surgeon.

09. The CRMP is disposed of in terms of above.

Sd/-

(Rajani Dubey)
JUDGE