

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1614 of 2019

- Omkar Gupta, S/o. Chaturbhuj Gupta, Aged About 52 Years, R/o. Ramgudipara, Raigarh, P.S.- City Kotwali, Tahsil & District-Raigarh, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh Through-S.H.O. of The Police-Station-Chakradhar Nagar, Tahsil & District- Raigarh, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Abhishek Saraf, Advocate.
For Respondent/State	:	Mr. Jitendra Shukla, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/03/2020

1. The petition has been brought being aggrieved by the order dated 11.11.2019 passed by the learned Special Judge under the Atrocities Act, Raigarh in S.T. No.05/2019 allowing the application filed by the prosecution for conducting DNA test of applicant to determine paternity of the child born to the prosecutrix.
2. It is submitted that the order impugned is erroneous, arbitrary and it violates legal rights of the applicant. There is no question of determination of paternity of the child, as raised by the victim's side. The prosecution has made an attempt to collect evidence against the applicant during the pendency of trial against him, which cannot be permitted. Hence, the impugned order is unsustainable and liable to be interfered.

3. Learned State counsel opposes the petition and submissions made in this respect. It is submitted that the trial Court has not committed any error. The prosecution has all the entitlement to pray for DNA examination to determine paternity of the child born to the prosecutrix. Hence, the petition be rejected.
4. It is a case of criminal prosecution against the applicant. At the stage of final argument, the prosecution has filed application for conducting DNA test to determine the paternity of the child born to the prosecutrix. It is the burden of the prosecution to bring evidence in proof of the charges for which prosecution has been launched. It appears that DNA test was never contemplated before the charge-sheet was filed and therefore it is an idea of the prosecution side which has come up at the stage when the trial is almost concluded.
5. It is not a case in which the paternity of child is in question. The applicant side has placed reliance on the judgment of Supreme Court in Goutam Kundu v. State of Bangal and another, reported in AIR 1993 SC 2295 in which the Supreme Court has laid down that Court cannot order blood test as a matter of course and wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained and that no one can be compelled to give sample of blood for analysis. This Court in WP227 No.837/2019 decided on 19.12.2019 relying upon the case of Sunil Trambake v. Leelawat Sunil Trambake, reported in AIR 2006 Bombay 140, has held that DNA test can be ordered by Court only when controversy cannot be resolved without DNA test.
6. In this particular case the purpose of seeking DNA test appears to be different i.e. to supplement the case of prosecution with evidence of paternity of the child, which may be found to be that of applicant in proof of charge against him under Section 376 IPC. Therefore, it is not a case in which DNA test is essential and necessary for determining the controversy in the case, rather it appears to be a case in which the prosecution is trying to muster-up additional evidence taking by surprise the applicant side. No consent of the applicant has been sought in this respect and therefore this appears to be violative of Article 20(3) of the Constitution of India, which says that no person accused of an offence, shall be compelled to be a witness against

himself. Hence, for these reasons I find that the order impugned is not in accordance with settled principles of law and the same needs interference.

7. Accordingly, the petition is allowed. The impugned order is set aside. The trial Court may proceed with trial and conclude the same in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha