

20.12.2021
Court No.2
Sl no. 15.
CP

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION*

C.R.R. 134 of 2021

In the matter of : Ananta Ray

..... Petitioner

Mr. Uday Shankar Chatterjee
Mr. Gobinda Ch. Roy
Mr. D. Kundu

... for the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.
Mr. Arun Kr. Sarkar

... for the State.

Affidavit of service sent by e-mail is taken on record.

Despite service, none appears on behalf of the opposite party no. 2.

The petitioner is aggrieved by the order dated April 20, 2021, passed by the learned Judge, POCSO Court, Cooch Behar in POCSO Case No. 03 of 2021. By the said order, the prayers for bail and DNA test were rejected. The learned court below was of the view that at the stage when there was nothing on record to show that a child was born, the question of having a DNA test of the child to ascertain the paternity of the petitioner, did not arise. The allegation against the petitioner is commission of an offence under Section 6 of the POCSO Act, 2012. The investigation has culminated in the filing of a charge-sheet before the learned court below and the trial is pending before the learned Judge, POCSO Court, Cooch-Bihar.

The contention of the complainant was that the petitioner had raped the victim, her daughter and the victim had conceived. The petitioner filed an application for DNA test. The learned court below rejected the said application on the ground that there was nothing either on record or in the pleadings to show that a child was actually conceived and born. Hence, at the relevant point of time, the learned court below rejected the petitioner's application for DNA test.

The learned Additional Public Prosecutor submits that there is no reflection of this aspect in the records of the investigation and in the case diary. The charge-sheet also does not contain any reflection of the fact that a child was born out of the alleged incident of rape.

As it is the submission of the learned Additional Public Prosecutor that the investigation is complete and charge-sheet has been filed and that the case is now ready for trial, the prayer of the petitioner to allow the DNA test at this stage, when the records of the investigation do not reflect the factum of a child being born, cannot be allowed.

The prayer of Mr. Chatterjee to direct the investigating agency to file a report before this Court with regard to the allegation of pregnancy also cannot be allowed. Birth of a child or factum of pregnancy is not a *sine qua non* to prove the charge of rape. It is for the prosecution to decide how the charge of rape shall be proved. The charge-sheet has already been filed.

The petitioner shall be at liberty to file an application before the learned Court below for a direction upon the investigating agency to investigate further on this issue and the learned Court below shall pass necessary orders in accordance with law as the learned Court deems fit. The petitioner may renew his prayer for DNA test under Section 315 of Cr.P.C. or if a report is filed by the authority containing the factum of birth of a child to the victim girl.

Revisional application is, accordingly, disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)