

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 776 of 2021**

- Chhotu Lal @ Ajay, S/o Alekh Ram, Aged About 26 Years, R/o Village Bhanwarpur, P.S. & Tehsil Basna, District Mahasmand Chhattisgarh.

---- Petitioner**Versus**

- State of Chhattisgarh Through Station House Officer, Police Station- Outpost Jutemill Kotwali, District Raigarh Chhattisgarh.

---- Respondents

For Petitioner : Mr. Pankaj Singh, Advocate

For State/respondents : Mr. Uddhaw Sharma, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****30.11.2021**

1. The petitioner has preferred this petition seeking direction in relation to the order dated 28.07.2021 passed by learned Additional Sessions Judge (FTC) in Sessions Trial No.39/2019 whereby the learned trial court allowed the application of the petitioner for his DNA test.
2. Brief facts of the case are that the petitioner is facing trial under Section 376 of IPC before learned trial court. Petitioner

has filed application for his willingness to DNA test and learned trial court vide order dated 28.07.2021 allowed the application of the petitioner but the DNA test was not conducted by prosecution agency. On 02.08.2021, petitioner/accused has preferred an application for conducting his DNA test and submitting that he is not in a position to bear the expenditure of DNA test & therefore Superintendent of medical college be directed to conduct the DNA test but the learned trial court dismissed the application on 02.09.2021 and fixed the trial for prosecution witnesses. Hence, this petition filed by the petitioner on the ground that the petitioner is in jail and looking to the financial conditions and his incapability, he prays to get the test through Government expenses.

3. Learned counsel for the petitioner submits that the prosecution is duty bound to conduct the DNA test and DNA test of petitioner and victim's child is necessary for proper and just decision in this case therefore, order dated 02.09.2021 is liable to be set aside and learned trial court may be directed to take necessary steps for taking sample of the petitioner for DNA test as per order dated 28.07.2021. In support of his argument, he placed his reliance on the decision of Hon'ble the Supreme Court in the matter of **Narayan Dutt Tiwari V. Rohit Shekhar and Another** reported in **(2012) 12 SCC 554** and this Court's order dated 02.08.2019 passed in **CRR No.**

36 of 2019 (Rakesh Kumar Sahu Vs. State of Chhattisgarh) and order dated 01.10.2019 passed in **CRMP No. 2222 of 2019 (Rakesh Kumar Sahu Vs. State of Chhattisgarh)**.

4. On the other hand, learned State counsel opposes the prayer of the petitioner.
5. Heard counsel for the parties and perused the material available on record.
6. Learned trial court vide order dated 28.07.2021 allowed the application filed under Section 53 (A) of Cr.P.C. for conducting the DNA Test.
7. Section 53-A of Cr.P.C. provides as under:-

53-A Examination of person accused of rape by medical practitioner.-

- (1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.*
- (2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely;*

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and”.

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section [173](#) as part of the documents referred to in clause (a) of Sub-Section (5) of that section.

8. It is clear from the section that it is the duty of the prosecution to conduct DNA test in these type of cases. Learned trial court has also allowed the application of the petitioner vide order dated 28.07.2021, therefore, it is the duty of the learned trial court to execute its order properly.

9. The writ Petition (criminal) filed by the petitioner is allowed with the following directions:-

(i) The trial court is directed to assign the task of conducting DNA test to the concerned Superintendent of Police, who in-turn, shall supervise the whole procedure of DNA test to be carried out in total secrecy and also to ensure that no inconvenience would be caused to the child and her parents.

(ii) The parents should not be forced to come to the police station or hospital, and is to be dealt by policeman in civil clothes.

(iii) The trial court may also impose additional conditions for completion of DNA test procedure without disturbing the child and the parents.

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

11. With the aforesaid observations, the writ petition (criminal) is finally disposed of.

**Sd/-
(Rajani Dubey)
Judge**

Ruchi/-