

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

**CRR No. 321 of 2021
Reserved on : 22.03.2021
Pronounced on : 24.03.2021**

Karan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. S. S. Sodhi, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 26.02.2021, vide which the trial Court has allowed an application, filed by the prosecution, for taking blood sample of the petitioner for DNA test.

Learned counsel for the petitioner has argued that as per allegations in the FIR, the petitioner has committed rape on a minor girl and the FIR No. 151 dated 30.09.2020 was registered under Sections 363, 366-A, 376(3) of the IPC and Section 6 of the POCSO Act, 2012 at Police Station Sadar, District Hoshiarpur.

Learned counsel further argued that after the registration of the aforesaid FIR, the petitioner was arrested and during investigation, while conducting the medico-legal examination of the prosecutrix, her blood sample was taken and sent to FSL, Mohali but the FSL raised an objection that the blood sample of the accused be also sent to give a definite opinion.

Therefore, the prosecution moved an application before the trial Court seeking permission to get the blood sample of the petitioner/accused for sending the same to FSL, Mohali and the same was allowed, vide impugned order dated 26.02.2021. The operative part of the order reads as under:

“4. After having heard the learned counsel for the parties and after having perused the record, it is found that accused is facing charges before this Court under Sec. 363, 366A, 376(3) IPC 1860 and Sec. 4 of POCSO Act, 2012, for kidnapping the minor prosecutrix from the lawful guardianship of her parents, for committing repeated rape upon prosecutrix under 16 years of age and for coming penetrative sexual assault upon minor prosecutrix. Report under Sec. 173 Cr.PC submitted in this court also reveals that it is mentioned therein that the parcel of medical swabs sent to FSL, Mohali for examination, but the same have been returned back with objections. The copy of said objections dated raised by Scientific Officer (Serology), Forensic Science Laboratory, Punjab Phase-IV, SAS Nagar, dated 18.11.2020 is placed on the record, in which it is mentioned that blood sample of accused is also necessary in this case. Now by moving present application, the prosecution/Investigating Agency is seeking permission of the court to take the blood sample of accused in order to comply with the objection raised by the FSL, Mohali. The said application has been assailed mainly by the learned counsel for accused on the ground that the accused has already been medically examined, investigation is over, challan is already filed and at this stage, he cannot be reexamined for taking his blood sample and it is against his fundamental right. In reply to this, the learned Addl. PP for the State has submitted that since there are allegations of rape against the accused,

therefore, his blood sample is necessary for DNA test, especially when the FSL raised objection in this regard where the medical swabs of prosecutrix were sent for examination. In this case, no doubt report under Sec. 173 Cr.PC is already filed, but while presenting the report under Sec. 173 Cr.PC, it is particularly mentioned that in the present case, two swab parcels of prosecutrix were sent vide Road No. 409/20 dated 18.11.2020 along with Docket No. 961/FSL dated 17.11.2020 through ASI Balbir Singh for depositing the same in Forensic Science Laboratory, SAS Nagar, Mohali, but the same were returned in the police station with objections and now the objections are being complied with. After getting the needful done from the concerned Doctor, the same will be deposited in FSL, Mohali and after receiving report, the same will be attached with the challan. In such type of cases, taking of blood sample of accused for DNA test is necessary. The citation ***Krishan Kumar Malik versus State of Haryana (supra)*** relied upon by the learned counsel for accused, is not applicable to the case in hand, being distinct from case in hand. However, in ***AK Partap versus Central Bureau of Investigation***, CrI. MC 4013 of 2017, decided on 7th July 2017, it has been observed that it is well settled by the Hon'ble Supreme Court that even in cases, where there is no specific provision in any law to authorize a particular course of action, the trial court can use its inherent or ancillary powers in a given situation to do justice. Further, even the Criminal Court can make a direction for a blood test of the accused, depending on the facts and circumstances of the case to find out the guilt or innocent of the accused. Such a direction will not offend Article 20(3) of Constitution of India. Therefore, looking to the peculiar facts and circumstances of the case in hand, and the material

available on record, and as objections of FSL, SAS Nagar, were already mentioned in report under Sec. 173 Cr.PC, I am of the considered view that the instant application moved by prosecution is liable to be allowed. Accordingly, the application for issuing production warrants of accused for taking his blood sample for DNA test, filed by prosecution/SHO, PS Sadar, Hoshiarpur is allowed and Superintendent, Central Jail, Kapurthala, where accused is lodged, is directed to produce the accused before this court on 10.3.2021 at 10.00 am, after which accused will be produced before the Civil Surgeon, Hoshiarpur for obtaining blood sample. Thereafter, on completion of procedure of blood sample, accused will be sent back to Jail. Necessary intimation be sent to Civil Surgeon, Hoshiarpur for compliance. Let production warrants of accused be issued for 10.3.2021. The concerned SHO/Investigation Officer is directed to do the needful and to appear on next date at 10.00 am sharp. Ahlmad to comply.”

Learned counsel further argued that the application has been moved at a belated stage after the report under Section 173 Cr.P.C. has already been submitted, therefore, at this stage, the prosecution wants to create new evidence by asking petitioner to give his blood sample.

After hearing learned counsel for the petitioner and going through the impugned order, I find no ground to interfere in the finding recorded by the trial Court.

The petitioner is facing a charge of committing repeated rape on the prosecutrix, who was less than 16 years of age and also for committing penetrative sexual assault upon her.

The trial Court, while allowing the aforesaid application, has

looked into the objections raised by the FSL, Mohali, wherein it is stated that it is necessary to provide blood sample of the accused for giving definite opinion. The trial Court has passed a well reasoned order in view of the judgment rendered by Hon'ble Supreme Court in case of **A. K. Partap's** case (supra).

Mere fact that application has been filed after submission of report under Section 173 Cr.P.C. is no ground to entertain this petition as learned State counsel has informed this Court that charges are yet to be framed.

Accordingly, finding no illegality or infirmity in the impugned order, this petition is hereby dismissed.

24.03.2021

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No