

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

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**CRM-M-39055-2021
Decided on : 21.09.2021**

Rakesh Kumar

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Kunal Dawar, Advocate
for the petitioner(s).

Ms. Jaspreet Kaur, AAG, Punjab.

MANJARI NEHRU KAUL, J. (Oral)

The petitioner is impugning the order dated 06.07.2021 (annexed as Annexure P-7), passed by the learned Additional Sessions Judge, Jalandhar, Punjab, whereby, his application for issuance of directions to the Investigating Officer to conduct his fresh DNA test, was declined.

An FIR bearing No. 165, dated 15.09.2018, under Section 376 of IPC, was registered at Police Station Division No.2, Jalandhar, Punjab (annexed as Annexure P-1), on the basis of a newspaper item, wherein, it was reported that the prosecutrix who was mentally challenged and residing in the Pingla Ghar Jalandhar, had been raped and thereafter, delivered a child. She was then married off to a man, who already had a child.

Subsequent to the registration of the FIR in question, the petitioner was arrested on 23rd June, 2019. During investigation, on an application moved by the Investigating Officer, the blood samples of the petitioner, the child delivered by the prosecutrix as well as one Vikas Kumar, who too was working in the Pingla Ghar, Jalandhar, were obtained for

Nagar, the genetic profile of the petitioner was consistent with that of the child of the prosecutrix and it was opined that he was the biological father of the child, delivered by the prosecutrix.

Learned counsel for the petitioner has urged that the samples, which were obtained by the Doctors for DNA profiling and which were sent to the FSL, did not contain the names of the persons, whose samples had been taken, and the samples were intentionally exchanged to rope in the petitioner in a false case. It was submitted that in fact, the false implication of the petitioner found substance from the statement of the prosecutrix recorded as PW-1 on 07.03.2021, wherein, though she identified the petitioner as being the culprit, who had raped her, however, she had admitted that she had been tutored to identify the petitioner as being the culprit. In support of his contention, he has drawn the attention of this Court to Annexure P-4, which is the deposition of the prosecutrix before the Court concerned.

Learned counsel has submitted that it was evident that the staff of Pingalwara was trying to protect the actual culprit i.e. Vikas and he was confident that it was the blood sample of Vikas, which had been intentionally exchanged with that of the petitioner. Learned counsel, thus, prayed that in the facts and circumstances of the case, fresh blood samples of the petitioner be sent for DNA sampling.

I have heard learned counsel for the petitioner and perused the impugned order as well as the other material on record.

This Court does not find any cogent reason to invoke its inherent jurisdiction under Section 482 Cr.P.C. and set aside the well reasoned order passed by the learned trial Court. The DNA test report was received on 31st May, 2019, wherein, it was clearly reported that the petitioner was the biological father of the female child. It is very strange that it is after four months of the receipt of the said report that the petitioner chose to wake up

from his slumber and move an application before the trial Court seeking a fresh DNA test. A perusal of the impugned order further reveals that the Court below has also noticed that as per the report received from the FSL, on receipt, the four parcels containing the blood samples of the petitioner, Vikas, prosecutrix and the child, were found to be sealed and intact. Hence, the submissions made by the learned counsel that the blood samples of the petitioner had been swapped with the blood samples of Vikas, deserves to be rejected.

This Court further finds the submissions made by the petitioner devoid of any merits, as it cannot be digested that the prosecution in connivance with the FSL would have exchanged the blood samples of the petitioner with Vikas to falsely implicate him, more so, when nothing has been brought forth as to why the FSL would connive with the prosecution. Still further, the prayer for a fresh DNA test made by the petitioner at such a belated stage and that too after the challan had been presented, charges framed and when the prosecution evidence was underway, *prima facie*, seems to be a ploy on the part of the petitioner to try and delay the trial, which admittedly is nearing conclusion.

In the wake of the aforementioned discussion, this Court does not find any merit in the instant petition.

Dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 21, 2021

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*