

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.306 of 2022

Arising Out of PS. Case No.-319 Year-2016 Thana- RUNISAIDPUR District- Sitamarhi

GANAUR RAI S/o Pragash Rai Resident of Village- Giddha Phulwaria, P.S.-
Runni Saidpur, District- Sitamarhi.

... .. Petitioner

Versus

1. THE STATE OF BIHAR
2. Pramila Kumari D/o Prabhu Rai Resident of Giddha Phulwariya, P.S.-
Runnisaidpur, District- Sitamarhi.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Vinod Kumar, Advocate
For the Respondent/s	:	Mr. Ramchandra Singh, APP
For O.P. No. 2	:	Mr. Pushpendra Kumar Singh, Advocate Ms. Divya Bharti, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 05-09-2022 Heard Mr. Rajendra Narayan, learned Senior Counsel
for the petitioner, Mr. Ramchandra Singh learned APP for the State
and Mr. Pushpendra Kumar Singh, learned counsel for the
opposite party no. 2.

The petitioner in this case is aggrieved by and
dissatisfied with the order dated 7-4-2022 passed in Sessions Trial
No. 06 of 2017 by the learned Additional District and Session
Judge-VI-Cum- Special Judge (POCSO), Sitamarhi.

By the impugned order, the learned court below has
allowed the application filed on behalf of the victim-informant and
directed the conduct of Deoxyribonucleic Acid (in short 'DNA')
tests upon the victim, her child and the accused-petitioner.



On perusal of the impugned order it appears that in this case the informant has alleged that the accused-petitioner who is aged about 76 years committed rape upon her as a result whereof she became pregnant and gave birth to a female child. The female child in question is at present aged about 5 years. The victim was working as a maid-servant during the period of occurrence in the house of the petitioner. During her evidence as PW 5, in paragraph 6 of her cross-examination, she has consented for the DNA test for the aforesaid child in question.

The application filed on behalf of the informant was opposed by the defence while filing reply thereto. It is submitted therein that the petition is not maintainable and it has been filed at a belated stage after the defence evidence has already been closed and the record is pending for argument.

The learned court below was, however, satisfied that in this case conduct of DNA test would be just and proper to decide the issues involved in the case. The court rejected the plea of the defence that the petition has been filed to fill the lacunae in the prosecution evidence.

Mr. Rajendra Narayan learned Senior Counsel for the petitioner submits that the informant has no locus to pursue this application under Section 371 Cr.P.C. for DNA test. Earlier, an application was filed on behalf of the prosecution but the said



application was not pressed. Learned Senior Counsel therefore submits that the informant could not have filed an application through a private lawyer at this belated stage.

It is his further submission that a direction to conduct DNA test invades the right to privacy of the petitioner and as such the petitioner cannot be compelled to undergo DNA test.

Learned counsel for the informant-opposite party no. 2 as well as learned APP for the State have jointly opposed this application. It is submitted that the impugned order has been passed keeping in view the taste of eminent need and requirement in the present case in order to arrive at a just and proper conclusion. It is not a routine kind of order and therefore, the order is not required to be interfered with.

It is further submitted that in view of the recent judgment of the Hon'ble Supreme Court in the case of **Jagjeet Singh and others vs. Ashish Mishra and others** reported in **AIR 2022 SC 1918** the victim has every right to intervene and seek justice by appointing her own lawyer. It is submitted that the victim-informant cannot be asked to remain a fence sitter.

This Court has heard learned counsel for the parties and perused the record.

It appears on a reading of the First Information Report that there is an allegation against the accused-petitioner that he by



alluring the victim had established physical relationship with her on many occasions as a result whereof she had become pregnant and was carrying a pregnancy of about 4 months at the time of lodging of the FIR.

It further appears that in course of her evidence the informant being PW 5 was specifically asked by the defence as to whether she would be ready to undergo DNA test and she agreed for the same. The investigating agency had earlier filed an application for a direction to conduct DNA test and this Court has been informed that the said application was filed on 17.7.2019 but for the reasons not known to this Court, the said application was not pressed on behalf of the prosecution. Under these circumstances, if the victim-informant has filed an application by engaging her own lawyer, this Court finds no reason to take an adverse view against that move of the informant.

In the case of **Jagjeet Singh and others** (supra) while answering a question as to whether the victim has a right to oppose an application for bail, the Hon'ble Supreme Court has, inter-alia, observed as under:

“25.... Instead, what must be taken note of is that; *First*, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged; *Second*, where the victims themselves have come forward to participate



in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

In the aforesaid view of the matter the plea that the informant could not have filed application by engaging a private lawyer is hereby rejected. The second submission of the learned Senior Counsel saying that the DNA test would intervene with the right to privacy of the accused and therefore, the accused cannot be compelled to undergo the same does not impress this Court in the facts situation of this case.

This Court finds that this issue has already been taken care of by the Hon’ble Supreme Court in the case of **Ashok Kumar vs. Raj Gupta and others** reported in **(2022) 1 SCC 20**, wherein referring to the judgment of the Hon’ble Constitution Bench in the case of **K.S Puttaswamy (Aadhar-5 J.) vs Union of India** reported in **(2019) 1 SCC 1** the Hon’ble Supreme Court held that the Court should examine the proportionality of the legitimate aims being pursued i.e. whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the



person and that they justify the encroachment upon the privacy of person and personal autonomy of the person, being subjected to the DNA test.

The Hon'ble Supreme Court held that there should not be a direction to undergo DNA test in a routine and mechanical manner. The Court should endeavor to balance the interest of the litigation and where the test of eminent need is not satisfied then the protection of the right to privacy of the parties should get precedence.

In the given facts and circumstances of this case, when the law laid down by the Hon'ble Supreme Court is applied, this Court finds that in this case, there is a specific allegation in the FIR that because of repeated physical relationship established by the accused-petitioner the victim had become pregnant. In course of her cross-examination, she was called upon to answer whether she would undergo the DNA test and she agreed for the same. In these circumstances, when the public prosecutor was not taking any step to press the application which was filed for a direction to conduct the DNA test, the victim-informant has approached the court.

This Court finds that the test of proportionality is duly satisfied in this case and the order allowing the application of the victim-informant cannot be said to be in the nature of a routine and



mechanical order. This Court is therefore, not inclined to interfere with the same. This application is dismissed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

