

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 1427 OF 2020**

Manzoor Khan Masood Khan

..PETITIONER

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Mr. Govind A. Kulkarni,  
Advocate i/b Mr. D.R. Deshmukh, Advocate for petitioner

Mr. S.P. Sonpawale, A.P.P. for respondent - State

Mr. K.D. Jadhav and Mr. A.D. Ostwal, Advocates for respondent

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**CORAM : R.G. AVACHAT, J.**

**DATED : 02<sup>nd</sup> MARCH, 2022**

**PER COURT :**

1. The challenge in this petition is to an order dated 30<sup>th</sup> September, 2020 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 267 of 2019. By the order impugned herein the revision application preferred by the petitioner came to be dismissed. The challenge in the said revision application was to an order dated 22<sup>nd</sup> August, 2019 passed by the learned J.M.F.C., Aurangabad directing the petitioner to submit himself to give blood sample for D.N.A. profiling.

2. The petitioner is an accused in Crime No. 0420 of 2018 registered

with Satara Police Station, Dist. Aurangabad for the offences punishable under Sections 376, 504, 506 and 509 of the Indian Penal Code. The First Information Report ('F.I.R.') has been lodged by the wife of real brother of the petitioner herein. It is her case that her husband has been mentally challenged. During the period from 1994 to August 2017 the petitioner had sexual intercourse with her many a time against her wish and without her consent. Initially, she had lodged an F.I.R. alleging the petitioner to have had outraged her modesty. In the said proceeding, the petitioner herein had been granted anticipatory bail. After a long span she came with the allegation of rape. Since the crime is under investigation, this Court desist itself from making any observation as regards veracity of the allegations in the F.I.R.

3. The investigating officer, taking recourse to Section 53A of the Code of Criminal Procedure ('Cr.P.C.') had called upon the petitioner to appear before him and subject himself for medical examination i.e. particularly to give his blood sample for D.N.A. profiling. It appears that the petitioner did not appear before the investigating officer and he, therefore, moved an application before the learned J.M.F.C. The learned J.M.F.C., in turn, allowed the said application. It is submitted by learned counsel for the petitioner that the learned J.M.F.C. did not give the petitioner hearing before passing the impugned order. He meant to say his vital rights have thus been jeopardized. The said order was taken exception in the revision application.

It appears that before the revisional Court, the petitioner herein has given oral consent to submit himself for medical examination for D.N.A. profiling. After having considered the matter on merits and consent given by the petitioner, the learned Additional Sessions Judge dismissed the same upholding the order passed by the learned J.M.F.C. Before this Court, learned counsel for the petitioner would submit that the petitioner is ready to give his blood sample for D.N.A. profiling. The petitioner is however apprehending that under the garb of investigation of the present crime, paternity of children of his brother is sought to be foisted on him and that will cause him irreversible damage in the long run that too in any other civil proceeding that may be initiated by the informant or her children in future. The learned senior counsel, therefore, urged this Court to protect his interest in that regard. He meant to say that the report of D.N.A. profiling, that may be received during the investigation of crime, shall not be allowed to be used by the informant or her children in any other civil proceeding. In support of his contentions he has relied on a number of citations.

4. Considered the submissions advanced. The F.I.R. has been lodged by the wife of real brother of the petitioner. Admittedly, the husband of the informant has been mentally challenged. An application was moved by the investigating officer under Section 53A of the Cr.P.C. This Court cannot interdict the process of investigation. The petitioner may approach the

appropriate forum taking exception to the F.I.R. in question. Since the petitioner had, before the revisional Court, given consent to submit himself for medical examination, this Court cannot interfere with the order impugned herein. Moreover, in order dated 29<sup>th</sup> October, 2020 passed by the learned predecessor of this Court in this very writ petition, it has been specifically observed that the learned senior counsel representing the petitioner herein, on instructions, gave consent to submit himself to medical examination for D.N.A. profiling. As such, the petitioner cannot be now heard to take exception to the order impugned herein. Writ petition would, therefore, fail. So far as regards the apprehension is concerned, the issue that may be crop up in future cannot be foreclosed at this stage. As and when such issue is raised before any forum, the petitioner would have his right to defend the same with all defences available for him.

5. In view of above, criminal writ petition stands dismissed.

**( R.G. AVACHAT, J. )**

SSD