

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI. WRIT PETITION NO. 993 OF 2022

Ravindra Bhimrao Jagtap

... Petitioner

Vs.

The State of Maharashtra
& Anr.

... Respondents

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Mr.Sachin H. Deokar for petitioner.

Ms. Anamika Malhotra, APP for respondent No.1 -State.

CORAM : N. J. JAMADAR, J.
DATE : 18th APRIL, 2022

P.C.:

1. Heard the learned counsel for the petitioner and the learned APP for the State.

2. The challenge in this petition is to an order dated 9th February 2022 passed by the learned Special Judge, Baramati, whereby the prosecution was permitted to conduct the D.N.A. profiling of the petitioner, as per rules.

3. The petitioner is facing prosecution for the offences punishable under sections 363, 366 and 376 of the Indian Penal Code, 1860 and sections 6 and 12 of the Protection of Children from Sexual Offences Act, 2012.

4. Trial has commenced. During the course of trial, five witnesses were examined by the prosecution. Thereafter, the prosecution preferred an application seeking permission to conduct D.N.A. profiling of the accused-petitioner. The application was resisted by the petitioner.

5. By the impugned order, the learned Special Judge was persuaded to allow the application holding, *inter-alia*, that the Investigating Officer had not requested the Medical Officer to collect the samples of the accused for D.N.A. profiling. Nor the Medical Officer collected the samples. Having regard to the nature of the accusation against the petitioner, the learned Special Judge was of the view that it was necessary to grant liberty to the prosecution to conduct D.N.A. profiling.

6. The learned counsel for the petitioner submitted that the impugned order suffers from a manifest error as no case for permitting the prosecution to conduct the D.N.A. profiling, after five witnesses were examined by the prosecution, was made out. It was further submitted that since the samples of the victim were collected for D.N.A. profiling and, by this time, the said samples must have been disposed of, no purpose would be served by collecting the blood samples for D.N.A. profiling, as there would be

no corresponding samples to match. It was further submitted that for the fault on the part of the investigating officer, for which there is no satisfactory explanation, the petitioner cannot be made to suffer.

7. The learned APP on the other hand supported the impugned order. It was submitted that the learned Special Judge has ascribed justifiable reasons as to why it was necessary to permit the prosecution to collect samples for D.N.A. profiling. In any event, no prejudice would be caused to the petitioner-accused.

8. What weighed with the learned Special Judge in allowing the application is evident from the observations in paragraph Nos.8 and 9 of the impugned order. They read as under :

“8] On careful perusal of the record of the case and the papers of the investigation, it is clear that the Investigating Officer had not requested the Medical Officer for collecting the samples of the accused for D.N.A. profiling at the time of his medical examination carried out vide his Report dated 28.05.2017. Further, the record does not show that the Investigating Officer has ever applied for D.N.A. Kit for collecting the samples of the accused for D.N.A. profiling. So also, the Investigating Officer has not requested the experts for the D.N.A. profiling of the samples. On the other hand, in his report dated 02.06.2017, forwarded to F.S.L., Pune, it is specifically mentioned that the samples of the accused for D.N.A. profiling will be sent afterwards. Thus, it is clear that prima-facie no samples were collected by the Investigating Officer.

9] *The offence with which the accused is charged is serious one and is committed against the victim minor girl. It is well settled principle that the victim should not suffer for the lapses committed by the Investigating Officer. Therefore, it will be proper to grant an opportunity to the prosecution for conducting the D.N.A. profiling of the accused. Therefore, the application deserves to be allowed.”*

9. The learned Special Judge found that there were lapses on the part of the investigating officer in asking the Medical Officer to collect the samples of the accused for D.N.A. profiling. It was further noted that in the report, dated 2nd June 2017, it was specifically mentioned that the samples of the accused would be sent afterwards. The exercise, it seems, was never done.

10. It would be contextually relevant to note that the Investigating Officer has filed an affidavit in reply. It is affirmed that omission came to light during the course of trial.

11. In the backdrop of the aforesaid reasons, as recorded by the learned Special Judge, it cannot be said that the impugned order suffers from such infirmity or perversity which would warrant exercise of writ jurisdiction. On the contrary, it appears the learned Special Judge found it necessary to have the report of D.N.A. profiling of the accused for a just decision of the case, in the context of grave nature of the accusation. In the quest for

truth, which is the object of criminal trial, the learned Special Judge found it expedient to order D.N.A. profiling of the accused. The order is such which advances the cause of justice. Hence, no interference is warranted.

12. Thus, the petition stands dismissed.

(N. J. JAMADAR, J.)