

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

115

CRR-19-2019

Judgment reserved on :-08.12.2022

Pronounced on:23.12.2022

Sonu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sandeep Kumar Yadav, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, for the respondent-State.

SUVIR SEHGAL, J.

Instant revision petition has been filed by the petitioner challenging order dated 11.12.2018, whereby application, Annexure P-5, filed by the prosecution for collection of blood sample of the accused-petitioner for conducting a DNA test, has been accepted.

In brief, factual matrix leading to the filing of the petition is that FIR No.13 dated 29.01.2018 has been registered at P.S. Satnali, District Mahendergarh, for offences under Sections 363, 366-A, 376, 506, IPC, 1860, and Section 04 of Protection of Children from Sexual Offences Act, 2012, (for short “the POCSO Act”) on complaint by mother of a 17 year old girl (for short, hereinafter referred to as “the minor prosecutrix”) stating that her daughter is missing from her home since 11 p.m. of the previous night. On enquiry, the complainant came to know that Sonu, present petitioner, has enticed her. Minor prosecutrix was found on 31.01.2018 and her statement under Section 164 of Criminal Procedure Code, 1973 (for short “the Code)

was recorded on 01.02.2018, Annexure P-1. On conclusion of investigation, *challan* was filed and on framing of charge, some prosecution witnesses were examined. During trial, the prosecution filed an application dated 04.12.2018, Annexure P-5, which has been accepted by the trial court vide order impugned herein.

Counsel for the petitioner has argued that the prosecutrix has neither supported the case of the prosecution in her statement under Section 164 of the Code nor in her testimony, Annexure P-2. While making a reference to the deposition of her mother-complainant as well as her father, Annexures P-3 and P-4, respectively, counsel submits that the application, Annexure P-5, has been filed by the State to fill in the lacuna as during investigation, the blood sample of the accused-petitioner was not collected and the *challan* was filed without conducting the blood test. He submits that the petitioner cannot be subjected to medical examination without his consent. Reliance has been placed by him upon the judgment of the Supreme Court in **Goutam Kundu versus State of West Bengal 1993 (2) R.C.R. Criminal 497.**

Opposing the petition, learned State counsel, upon instructions, has submitted that the FSL report was received after the trial started and human semen was detected on the salwar, glass slides as well as vaginal swabs of the minor prosecutrix as well as on the underwear of the accused-petitioner. She submits that the application, Annexure P-5, has been moved thereafter. A specific reliance has been placed by her upon Section 53-A of the Code as well as Section 165 of Indian Evidence Act, 1872.

I have heard counsel for the parties and examined the documents appended with the paper-book with their able assistance.

In **Sharda Versus Dharampal 2003 (4) SCC 493**, Hon'ble Supreme Court has held that Gautam Kundu's case (supra) is not an authority for the proposition that the Court cannot order a blood test in any circumstance. It has been observed that a matrimonial Court has the power to direct a person to undergo a medical test, if the applicant has a strong *prima facie* case and there is sufficient material before the Court to come to the conclusion that exercise of this power is eminently needed.

Insofar as matters pertaining to allegations of rape or attempt to rape, are concerned, situation is somewhat different. Section 53-A has been introduced in the Code with effect from 23.06.2006, which makes it obligatory upon the prosecution to subject the accused to a DNA test for establishing the case against the accused particularly when there is likelihood that the test may provide material to connect the accused with the crime.

Coming to the facts of the present case, after the deposition of the prosecutrix, report has been received from the Forensic Science Laboratory reporting that human semen has been detected on the person and clothing of the prosecutrix as well as on the undergarment of the accused. As the material witnesses, including the minor prosecutrix have not supported the case of the prosecution, under such circumstances, it is statutorily imperative for the prosecution to collect the blood samples of the accused for conducting DNA analysis. Therefore, the order passed by the trial court directing the collection of the blood sample of the accused, is justified. The objective of criminal law is to find out the truth and punish the guilty. Section 53-A of the Code is aimed at attaining this purpose.

This Court does not find any illegality or impropriety in the order passed by the trial court and no interference is called for in exercise of revisional jurisdiction.

Petition being meritless, is hereby dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of main case, which shall be decided by the trial court, uninfluenced by any observation made hereinabove.

23.12.2022
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No