

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

(119)

CRR-946-2022

DATE OF DECISION:- 09.05.2022

MOHIT

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Goyal, Advocate for the petitioner.

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

SUVIR SEHGAL, J. (ORAL)

Vide the instant revision petition filed under Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”), the petitioner has challenged order dated 06.04.2022 passed by the learned Additional Sessions Judge, Sirsa, whereby on an application moved by the respondent-State, the petitioner has been directed to give his blood sample for conducting a DNA test in case FIR No.63 dated 19.12.2018 lodged for offences under Sections 354, 376(2) (n), 376-D, 451 and 506 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 at Police Station Women, Sirsa.

Counsel for the petitioner has urged that the application seeking blood sample of the accused-petitioner has been moved after a lapse of more than three years of the conclusion of the prosecution evidence and is an attempt by the prosecution to fill up the lacuna in the

prosecution case, which is at its fag end. He submits that the petitioner was subjected to medical examination immediately after the registration of the FIR and cannot be made to undergo the same process again that too without his consent in violation of Article 20 (3) of the Constitution of India.

Advance copy of the petition has been served upon the State. Upon instructions received from L/ASI, Manju Bala, State counsel has opposed the petition and while inviting attention of the Court to the allegations leveled against the petitioner, has referred to Section 53-A as well as Section 91 of the Code.

Heard counsel for the parties and examined the paper-book with their able assistance.

The petitioner is accused of repeatedly sexually assaulting the victim, who is the complainant, and threatening her with dire consequences. The medical of the victim was conducted on 19.12.2018, the day FIR was lodged by her and the medical of the accused was conducted on the subsequent day. However, FSL was received much later, which shows that semen has been detected on the belongings of the victim. In these circumstances, it is therefore, necessary for the prosecution to obtain the blood sample of the accused for DNA analysis. Moreover, Section 53-A of the Code, which has been incorporated in the year 2006, makes it mandatory to go in for a DNA test in cases involving allegations of sexual assault to facilitate the prosecution to prove the case against the accused. Conducting of such a test would enable the prosecuting agency as well as the Court to arrive at the truth, which is one of the objectives of criminal law. The consent of the accused for

getting his blood sample is not necessary and the constitutional validity of Section 53-A has been upheld in **Shreemad Jagadguru Shankaracharya Versus State of Karnataka, 2014 (37) RCR (Criminal) 787** and it has been held that the provision cannot be termed as violative of Article 20 (3) of the Constitution. Although, it has been urged on behalf of the petitioner, that the blood sample is being sought to be obtained after the conclusion of prosecution evidence, but the factual position has been controverted by the State and it has been categorically submitted that the prosecution evidence is underway. Furthermore, there is no bar in the statutory provision that such a test cannot be conducted during the course of the trial.

In view of the above discussion, this Court is of the view that there is no merit in the petition, which is hereby dismissed.

Needless to mention, any observation made hereinabove shall not be construed to be an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

09.05.2022
Kamal

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No