

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

(116)

**CRM-M-50613-2021
DATE OF DECISION:- 04.02.2022**

NASEEB

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Deepam Raghav, Advocate
for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana
for respondent No.1.

SUVIR SEHGAL, J. (ORAL)

Heard through video conferencing.

Challenge in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) is to the order dated 12.10.2021, Annexure P-9, passed by the learned Special Judge-cum-Additional District & Sessions Judge, Rohtak in SC No. 177 dated 08.12.2018 titled as State of Haryana Versus Naseeb in FIR No.435 dated 20.07.2018 registered for commission of offence under Sections 376 and 506 of the Indian Penal Code, 1860 at Police Station Shivaji Colony, Rohtak, vide which application filed by the State-respondent No.1 for taking blood sample of the petitioner for DNA analysis has been allowed.

Criminal law has been set in motion on the basis of a statement of the prosecutrix on the allegation that on 18.07.2018, Naseeb came to her house when her husband was out, raped her and threatened

her not to reveal the incident to anyone. Due to fear, she did not disclose the occurrence to her husband and mother-in-law for few days.

Counsel for the petitioner submits that during the course of investigation, the blood sample of the accused-petitioner was taken for the purposes of DNA test, but without getting any report, a fresh application has been submitted by the SHO concerned during the course of the trial when the prosecutrix was being examined. He submits that the blood sample cannot be taken twice over for the purpose of testing.

Per contra, learned State counsel, upon instructions from, L/PSI Ankita, has opposed the petition and submitted that during the pendency of the instant petition, the blood sample of the accused has been sent to the FSL for the purpose of analysis. She has opposed the petition by inviting the attention of the Court to Section 53-A as well as Section 91 of the Code.

I have considered the respective submission of the counsel for the parties.

Section 53-A has been inserted in the Court w.e.f. 23.06.2006. It makes it mandatory for the prosecution to conduct the examination of the accused in cases involving allegation of rape or attempt to rape for establishing the case against the accused more so when there is a possibility that the examination is likely to provide material to connect the accused to the crime. After examining the constitutionality of the provision, High Court of Karnataka in ***Shreemad Jagadgaru Shankaracharya Versus State of Karnataka, 2014 (37) R.C.R. (Criminal) 787*** has held that Section 53-A of the Code does not infringe any constitutional provision.

In the present case, human semen has been detected on the bed sheet, as per the report of the Regional Forensic Science Laboratory, Sunaria, Rohtak. It is, therefore, imperative to get the blood sample of the accused for DNA profiling. The blood sample taken earlier, during the course of investigation, was not preserved and got damaged, consequently, it could not be sent for testing. It is not the case of the accused that the prosecution is conducting the DNA profiling for the second time. In the above situation, the filing of the application by the State for collecting the blood sample cannot be faulted with. It also deserves to be noticed that the Trial Court has taken a serious view of the casual manner in which the investigation has been conducted and has directed the Superintendent of Police and the Inspector General of Police, Rohtak to enquire into the matter and fix responsibility. There is no illegality or perversity in the order passed by the Trial Court.

Petition, is accordingly, dismissed.

Taking notice of the fact that in cases of heinous crime against women, a very callous approach is adopted by the Investigating Agency, the affidavit of the Superintendent of Police, Rohtak, is called for to apprise this Court of the action taken in pursuance of the order passed by the Trial Court on 12.10.2021.

List for the said purpose on 20.04.2022.

(SUVIR SEHGAL)
JUDGE

04.02.2022

Kamal

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