

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

CRR-2505-2022 (O&M)

Date of decision: 23.11.2022

Rakesh Singh

....Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Abhimanyu Singh, Advocate, for the petitioner.

RAJESH BHARDWAJ, J.

The petitioner has approached this Court impugning the order dated 29.10.2022 passed by the learned Special Judge-cum-Additional Sessions Judge, Rohtak, whereby, the application filed by the prosecution seeking blood sample of the petitioner Rakesh Singh for DNA profile has been allowed by directing the Investigating Officer to conduct the proceedings for obtaining blood sample of the petitioner for DNA analysis.

It has been contended by learned counsel for the petitioner that the learned trial Court has illegally allowed the application filed by the prosecution at this stage for seeking blood sample for DNA profile of the petitioner. He submits that the FIR was lodged against the petitioner by the complainant-prosecutrix and allegations were levelled by the prosecutrix of committing forcible rape with her. On the registration of the FIR, the investigation commenced and the Investigating Agency presented the challan against the petitioner and the co-accused, namely, Ravinder. Thereafter, the charges were framed against the accused. It was submitted by learned counsel for the petitioner that the trial is at the advanced stage and the complainant/prosecutrix, who is of the age of the majority has appeared before the trial Court as PW-3 and she has not supported the case of the prosecution

and resultantly, she was declared hostile. However, at this stage, the prosecution filed an application seeking blood sample of the petitioner for DNA profile. He submits that the petitioner duly opposed the application filed as the prosecution has already examined seven witnesses and the trial is at the fag end. He submits that the learned trial Court has failed to appreciate the arguments raised by learned counsel for the petitioner and the law settled and thus, illegally allowed the application filed by the prosecution for taking blood sample of the petitioner for DNA profile. He submits that by filing this application, the prosecution has tried to fill up the lacuna in its case, which cannot be allowed. He submits that the application filed by the prosecution is an act of vendetta to falsely implicate the petitioner in this case when the prosecutrix has already been declared hostile. He has relied upon the judgment of Hon'ble Supreme Court in case of Inayath Ali & another vs. State of Telangana and another, passed in SLP (Crl.) No.4946/2017 decided on 15.09.2022.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is evident that the petitioner is facing prosecution for the offence under Sections 120-B, 201, 328, 376(2)(n), 506, 467, 468, 420 IPC and the prosecutrix is of the age of the majority. Though the prosecutrix has been declared hostile, however, the prosecution has filed the application seeking blood sample of the petitioner for DNA profile. For appreciation of controversy raised, Section 53 explanation (a) Cr.P.C. is relevant and reproduced as under:-

Section 53 explanation (a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail

clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;”

Statutory provisions of Section 53 explanation (a) Cr.P.C. enumerate the provisions regarding the examination of the persons accused of rape by medical practitioner. The statutory provisions of Section 53 (a) Cr.P.C. prescribe even the use of force as is reasonably necessary for the purpose of examination. The case pertains to sexual abuse of the victim. Though the trial is at the advanced stage, however, the application filed by the prosecution seeking blood sample cannot be said to be suffering from any illegality. The petitioner though has already been examined by the Investigating Agency, however, taking the blood sample for DNA profile is in pursuit of truth for the allegations levelled by the prosecutrix. As far as the judgment relied upon by learned counsel for the petitioner is concerned, the same is distinguishable in the facts and circumstances of the present case. This Court does not find any infirmity in the conclusion arrived at by the learned trial Court in allowing the application filed by the prosecution seeking blood sample of the petitioner for DNA profile. Consequently, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)

JUDGE

23.11.2022

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Whether Speaking/Reasoned :

Whether Reportable :

Yes/No

Yes/No