

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.134 of 2023

Arising Out of PS. Case No.-354 Year-2020 Thana- GHORASAHAN District- East
Champaran

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Shekh Saidullah @ Md. Saidullah S/O Shekh Islam R/v- Bagha Nagarwa,
P.S.- Ghorasahan, District- East Champaran (Motihari)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sajada Khatoon D/O Ejajul Dewan R/v- Nagarwa tola Bagha, P.S.-
Ghorasahan, District- East Champaran (Motihari)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Priya Sharan Singh, Adv.
For the Respondent/s	:	Mr. Uday Chand Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 20-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

The present criminal revision petition has been filed for setting aside the order dated 19.11.2022 passed by learned Addl. Sessions Judge-VI -cum- Special Judge, East Champaran at Motihari passed in P.Tr. No. 144 of 2020 / CIS No.173 of 2020 whereby the petition dated 23.12.2021 filed by the accused petitioner for conducting DNA test of the victim's son has been dismissed. Only on technical ground that victim has not given consent for DNA test.

Counsel for petitioner submits that the present F.I.R. has been lodged in the year 2020. The age of petitioner at present is 50 years meaning thereby, at the time of occurrence,

he is aged about 47 years approx. In the F.I.R., there is allegation of rape of the victim of 14 years 4 times in between 10 to 11AM by which the said 14 years aged victim become pregnant and given birth to one male child. Counsel submits that on the basis of said allegation, charge has been framed on 02.02.2021. Counsel submits that with a view to ascertain the truth, he has submitted date of birth of the petitioner by which it transpires that she is not of 14 years rather she is 20 years old. In this regard, there is already a provision laid down under Section 34 (2) of the POCSO Act, according to which Court can determine the age of a person including victim under this Act.

Counsel further submits that petitioner is innocent and with a view to show his innocence, DNA test of the child is necessary to ascertain the truth in this matter. Under POCSO Act, it is the duty of the prosecution to disapprove his case and with a view to disapprove the case, DNA of the child whose birth has taken place by virtue of association of accused with victim.

Counsel for State submits that consent from the person whose DNA has to take place, is necessary, therefore, Court has rightly passed the order.

This Court is of the view that this general principle is applicable in normal Criminal Justice System. But in a case

where the presumption has been casted about culpable mental state as mentioned in Section 30 of POCSO Act and responsibility has been given to the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in prosecution. Therefore, it is necessary that DNA must be taken place on the basis of the application made by the accused itself.

In this view of the matter, the order dated 19.11.2022 passed by Addl. Sessions Judge-VI -cum- Special Judge, East Champaran at Motihari in P.Tr. No. 144 of 2020 / CIS No.173 of 2020 is hereby set aside.

The Court is directed to pass order afresh considering the correct position of law as laid down under the POCSO Act and if DNA is not possible then the inference in accordance with law laid down in POCSO Act which is different from Cr.P.C. shall be drawn.

With this direction, this Criminal Revision Application is hereby disposed of.

(Dr. Anshuman, J.)

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