



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 15150 OF 2023

**SHIVNATH BHUJANGRAO DANGE
VERSUS
MANISHA SHIVNATH DANGE AND ANOTHER**

...

Advocate for Petitioner : Mr. Aniket P. Sonpethkar h/f Mr. Sonpethkar P. Narayanrao

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CORAM : SHAILESH P. BRAHME, J.

DATE : 12th DECEMBER 2023.

Per Court :

. Heard the learned Counsel for the petitioner.

1. The petitioner is challenging order below Exhibit-11, rejecting to hold DNA test by collecting samples of the respondent/wife and her newly born child.

2. The petitioner has filed HMP No. 353/2019 against respondent/wife on the ground of adultery. The commencement of the evidence has not begun. The petitioner is questioning fedality of the wife and fatherhood of third child born after the separation of the parties. He pressed into service application at Exhibit-11 for conducting DNA test. It is rejected by learned Judge vide order dated 15.09.2021.

3. Learned Counsel submits that conducting of the DNA test is necessary in view of peculiar circumstances. He has led foundation for challenging paternity of third child. He would further submit that the judgments cited across the bar which are mentioned in pursis annexed at Exhibit-D have not been referred to by the learned Judge.

4. I have considered those judgments which are not referred by the learned Judge. The judgment rendered by the Supreme Court in the matter of **Dipanwita Roy Vs. Ronobroto Roy**, reported in AIR 2015 SC 418, indicates that DNA should be resorted to only as a last resort and in exceptional case. In paragraph no.9, there is a reference to earlier judgment of the Supreme Court rendered in the matter of Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another, AIR 2010 SC 2851. Paragraph Nos. 21 to 24 would disclose that only as eminent need and only to unravel truth, the resort to the DNA test be made. A concern is expressed by the Supreme Court about the right of privacy of minor and the devastating effect on the minor due to the result of DNA test.

5. The matter is yet to reach the stage of recording of the evidence. Considering the position that the petitioner cannot directly resort to DNA test without bringing sufficient material on record, I am not inclined to interfere with the impugned order at this stage. However, the parties will have a liberty to recourse to the DNA test at the subsequent stages of the proceedings.

6. No interference is called for in the impugned order. The writ petition is disposed of with liberty to the petitioner to take recourse to the conducting of DNA test after leading the evidence, if so required.

[**SHAILESH P. BRAHME, J.**]

Najeeb.