

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2590 OF 2023**

Khushbu Dilip Rathore

.. Petitioner

Versus

Kartik Deepak Mehta and anr

.. Respondent

...

Ms.Yogini Ugale for the Petitioner.
Mr. Y.M. Nakhwa, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 10th OCTOBER, 2023**

P.C:-

1 As directed earlier, the learned counsel has scanned the position of law on the point as to whether it is obligatory for the Court to direct conduct of DNA test as if there is no option left, and in this particular case when she is claiming maintenance for her child and the respondent is denying the paternity.

 The learned counsel would rightly place reliance upon the decision of Apex Court in case of *Aparna Ajinkya Firodia vs Ajinkya Arun Firodia (2023) SCC Online SC 161*, wherein, by reiterating the law laid down in case of *Goutam Kundu*, and on consideration of the relevant provisions in the Indian Evidence Act and in particular in Section 112. Their Lordships have culled out the circumstances under which a DNA test of a minor child may be directed to be conducted and the relevant one read as under:

“(1) that courts in India cannot order blood test as a matter of course;

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) there must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) the court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) no one can be compelled to give sample of blood for analysis.”

2 In the present case, the petitioner is yet to enter into the witness box and it cannot be said that she will not be in a position to prove the factum of paternity of the respondent by any other evidence as she shared a relationship in the nature of marriage with him for last six years. Since it has been categorically held that the DNA test shall be resorted to as the last measure when there is no other mode to prove the paternity. I do think that the Family Court had committed any error in disallowing the said application.

For the reasons so recorded, the Criminal Writ Petition is dismissed by upholding the impugned order.

(SMT. BHARATI DANGRE, J.)