



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4546 OF 2024

1. Kishor Pandit Suryawanshi
Age: 24 Years, Occu: Agril.
R/o. Savarpada, Tal. Sakri,
Dist. Dhule.
 - 2 Chhotu @ Prasad Ratilal Bagul
Age: 24 Years, Occu: Agril.
R/o. Savarpada, Tal. Sakri,
Dist. Dhule.
 3. Chetan Bhatu Bagul
Age: 22 Years, Occu: Agril.
R/o. Savarpada, Tal. Sakri,
Dist. Dhule..
|
 4. Sandesh Ramdas Sable
Age: 20 Years, Occu: Agril.
R/o. Savarpada, Tal. Sakri,
Dist. Dhule.
 5. Jayesh Nehru Suryawanshi
Age: 25 Years, Occu: Agril.
R/o. Savarpada, Tal. Sakri,
Dist. Dhule.
- ... Applicants

VERSUS

1. The State of Maharashtra
Through its Sakri Police Station
Sakri, Tal. Sakri, Dist. Dhule.
2. XYZ
... Respondents

Mr. Vijay Bhalerao Patil, Advocate for the Applicants
Mr. V. M. Jaware, APP for the Respondent State

CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 22.11.2024

PRONOUNCED ON: 29.11.2024

JUDGMENT:-

1. By the present application under section 482 of the Criminal Procedure Code, the applicants accused have impugned the order dated 04.10.2024 passed below Exhs. 72 and 73 in Special Case No.113/2023 by the learned Special Judge (POCSO) and Additional Sessions Judge, Dhule, invoked Section 173(3) of the Cr.PC., and permitted the Investigating Officer to collect blood samples of the applicants/accused and the victim for DNA test after recording statements of the accused under Section 313 of the Criminal Procedure Code.

2. In nutshell, it is the case of the applicants/accused that they are facing trial for the offences punishable under Sections 376 (3), 376-D, 376 (D) (A) of the Indian Penal Code and Sections 4, 8, 12 of the Protection of Child from Sexual Offence Act, (POCSO Act) in Crime No. 0206/2023 registered with Sakri Police Station, District Dhule on 04.06.2023. It will not be out of place to mention here that after filing the charge sheet and after hearing, the learned trial Court framed the charges and plea of the accused recorded. All the accused pleaded not guilty and claimed for trial. In order to prove the charge, the prosecution examined all the witnesses

and matter was posted on 25.09.2024 for recording statements of the accused under Section 313 of Cr.P.C., and statements of applicants recorded. Thereafter, the matter was posted on 01.10.2024 for argument.

3. However, on 27.9.2024, the prosecution has filed Exh. 71 an application and sought permission for taking case on Board. The prosecution also filed Exhs. 72 and Exh. 73 applications and sought permission for collection of blood samples of the victim as well as the present applicants/accused for conducting DNA tests. The applicants accused filed their reply and resisted the applications on ground that during course of investigation, their blood samples for conducting DNA tests were collected and same were sent to the Chemical Analyzer for test. However, the investigation officer has not given explanation as to why their blood samples are necessary, but the prosecution wanted to fill up lacuna at the belated stage, hence, prayed for rejection of the applications Exhs. 72 and 73.

4. On 04.10.2024, the learned trial Court passed the impugned order below Applications Exhs. 72 and 73 holding that after recording statement under section 313 of Cr.P.C., the Investigating Officer received a letter dated 25.09.2024 from the Chemical Analyzer informing about requirement of blood samples of the applicants accused and the victim for further analysis because the muddamal property "Condom" which has

been sent for chemical analysis has been examined but to compare the DNA profile of the accused and victim their blood samples are necessary. Therefore, in view of subsequent development, the prosecution permitted to collect blood samples of the applicants/ accused and victim.

5. Mr. V. B. Patil, the learned counsel appearing for the applicants canvassed that the learned trial court has took cognizance of the offence soon after framing of the charge. The prosecution examined all the witnesses and after conclusion of the trial, statements of the accused are recorded under Section 313 of the Cr.P.C.. Thereafter matter was ripped for final argument. However, on 27.02.2024, the prosecution filed Exh.71 an application and taken case on board and filed Exh. 72 and 73 Applications seeking permission to collect blood samples of the accused & Victim for conducting DNA test. However, the learned trial Court, without considering the provisions of Section 173(8) Cr.P.C., granted permission for collection of blood samples of the applicants accused, which is not permissible in the eyes of law.

6. The learned counsel for the applicants/accused further canvassed that, the learned trial court exercised powers under section 173(8) of Cr.P.C., and directed for re-investigation even after closing of evidence and after recording statements u/s 313 of Cr.P.C., and permitted the prosecution to collect the blood samples of the applicants/accused,

therefore, the learned trial court exceeded its jurisdiction and passed impugned order, which is illegal, bad in law, hence prayed to quash and set aside the same.

7. The learned counsel appearing for the applicants accused further canvassed that powers under section 173(8) Cr. P.C., provides for reinvestigation, however, in case in hand, though the Investigation Officer conducted investigation and collected blood samples of the applicants/accused on 05.06.2023 but the prosecution failed to give explanation as to why DNA test not been conducted and as to why prosecution wants to take blood sample of accused again. Therefore, impugned order is illegal and bad in law.

8. The learned counsel appearing for the applicant further canvassed that the learned trial court could have considered that, the I. O., already collected blood samples of the accused and referred to the Forensic Lab. Therefore, permitting the I.O. to collect blood samples of the applicants/accused persons afresh is nothing but an illegal and abuse process of law, hence, prayed for quash and set aside impugned order.

9. In support of this submission, the learned counsel appearance for the applicants placed reliance on the following cases:

(1) K. Vadivel Vs. K. Shanthi & ors, 2024 DGLS (SC) 957

***(2) Melatharu Mining Company Vs. State of Maharashtra, 2022
DGLS(Bom.) 3477***

(3) Wazid Ansari s/o Daud Ansari Vs. Police Inspector and others.

10. Per contra, the learned APP submitted that during the course of investigation, the Investigating Officer seized some articles (including condom). The I. O. collected blood samples of the victim as well as the applicants accused persons. Thereafter all seized articles and condom were sent for chemical analysis, however, no Chemical Analysis Report was received till examination of all witnesses. Therefore, on 23.08.2024, the learned trial Court issued a letter to the Deputy Director of Mini Forensic Science Laboratory, Dhule that seized Muddemal already been sent for analysis but no CA report received and directed to furnish CA Report pertaining to Crime No. 0206/2023. So also, the Public Prosecutor issued letter dated 31.08.2024 to the Police Inspector, Sakri police Station and requested for collection C.A. Reports. Thereafter, I. O., issued letter to the Chemical Analyzer for providing CA Reports. In reply to said letter, on 25.09.2024, the Assistant Director, Forensic Science Laboratory, Dhule issued a letter to the Police Station Sakri and informed about conducting DNA test on Condom, however for further analysis, blood samples of victim and applicants/accused necessary. Therefore, the prosecution filed an application Exhs. 72 and 73 for collection of blood samples of accused and victim as well the accused who is released on bail. Therefore, merely permitting the prosecution to collect blood samples does not amount to

further investigation under section 173 (8) of the Criminal Procedure Code but it will be just to arrive at proper conclusion. In support this submission, the learned APP placed reliance on the following case of ***Ram Udagar Mahto Vs. State, AIROnline 2021 Del 1629.***

11. Having regard to the rival submission canvassed on behalf of both sides, I have gone through the record. It is not in dispute that statements of the applicants/accused are recorded under Section 313 of Cr. P. C., after recording evidence of all the prosecution witnesses. However, subsequent to that, the learned trial Court noticed about non production of Chemical Analysis Report in respect of blood samples of the accused as well as other seized articles which were sent for chemical analysis. Therefore, on 23.08.2024, the learned trial court issued a letter to the Chemical Analyzer and directed to furnish CA report immediately. It further depicts that, the public prosecutor also issued a letter dated 31.08.2024 and called upon the P. I., Sakri Police Station to collect the CA Report from the Forensic Science Lab and produce before the Court.

12. Needless to say that on 10.09.2024, the Assistant Director, Mini Forensic Science Laboratory, Dhule submitted a letter with the trial court disclosing of conducting chemical analysis and handing over said report to the concerned police station through Shri S.R. Pawar, Buckle No.

609 on 04.07.2024. However, some seized muddemal has been referred for DNA test at Forensic Science Laboratory at Nashik, but no report was received.

13. On 25.09.2024, the Assistant Director, Forensic Science Laboratory, Dhule issued a letter to the Police Station Sakri and requested for collecting blood samples of the victim as well as accused persons for conducting DNA test to compare with the substance appearing on "Condom" which was referred for chemical analysis. In pursuance of the said letter, the prosecution filed Applications Exhs. 72 and 73 and prayed for permission to collect blood samples of the applicants accused including accused No.5 Jayesh Nehru Suryawanshi who is released on bail.

14. No doubt, the applicants/accused resisted said applications on the ground that during course of investigation, the I. O., collected their blood samples and sent to Chemical Analyzer but neither the Chemical Analyzer nor the prosecution explained what happened about said blood samples though the letter Exh.67 providea about referring seized condom for chemical analysis.

15. Section 173(8) of the Cr.P. C. provides as under:

"Section 173: Report of police officer on completion of investigation.

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-Section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding, such evidence in the form prescribed; and the provisions of Sub-Sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-Section (2)."

16. In case of Ram **Udagar Mahto**, *cited supra*, Delhi High Court observed in paragraph 24 as under:

24. Insofar as the question of the impugned direction amounting to further investigation is concerned, it has been noted earlier that the word "further" means additional, more, or supplemental; and "further investigation", therefore, 14 (2016) 3 SCC 135 15 (2020) 16 SCC 777 would mean continuation of the earlier investigation. The facts of the present case are peculiar. It is noted that the blood sample of the petitioner was duly taken during initial stages of the investigation and at that time, the petitioner had not raised grievance of any sort. The blood samples were seized and sent to the FSL for examination, where they were duly received. However, the samples were not timely analyzed at the FSL and could only be examined after a delay of more than one year and four months from the date of their receipt at the FSL. As per the FSL Report filed before the learned Addl. Sessions Judge, even though DNA profile was generated from the underwear of the child victim, none could be generated from the blood samples of the child victim and the petitioner resulting in failure to test the samples against each other for a match. In view of this Report, the Investigating Officer filed an application for retaking of the blood samples of both the child victim as well as the petitioner. Neither the investigation was defective nor lacking on this aspect. The fault,

if any, laid with the FSL for examining the samples after a considerable amount of time. Pithily put, the Investigating Officer had not come across any additional, more or supplemental material. There was no subsequent disclosure/discovery of any new or additional material whatsoever. By filing the application, the Investigating Officer was only repeating the step which he had already taken in the earlier investigation. In the peculiar facts and circumstances of this case, this Court is of the opinion that the impugned direction does not amount to directing further investigation."

17. It not in dispute that, during the course of investigation, the Investigating Officer collected the blood samples of the applicants/accused and the Victim through the medical officer under the seizure panchanama. The said collected blood samples were referred for the Chemical Analysis. As per letter dated 10.09.2024, issued by the Assistant Assistant Director, Mini Forensic Science Laboratory, Dhule some articles were sent for chemical analysis to Forensic Science Laboratory at Nashik. Therefore, there is every possibility that blood samples which were collected earlier were also sent at Nashik. Therefore blood samples of the accused and victim not available with Forensic Science Laboratory, Dhule for conducting DNA with the substance appearing on the "Condom". Therefore, merely permitting the prosecution for collection of blood samples of the accused and the victim it does not amount to grant of permission for re-investigation or further investigation contemplated under Section 173 of Cr.P.C. It is not the case of either prosecution or the Applicants/accused that the I.O. trying to collect blood samples of these

applicants first time after conclusion of trial. Since, blood samples of these applicants already been collected and sent for chemical examination but due to referring some articles to the FSL, Nashik, therefore, blood samples of the applicants and victim not available with the Mini Forensic Laboratory, Dhule for examination of substance appearing on "Condom". Since, the applicants are facing trial for serious offences including gang rape, therefore, in order just decision of the case, blood samples of the applicants are necessary. Therefore, merely permitting the prosecution to collect blood samples of the accused certainly does not amount to fill up lacuna in the investigation or reinvestigation but it is for just decision of the case and to arrive at proper conclusion.

18. In view of the above, I do not find that the impugned order is illegal, bad in law, hence, no interference is called at the hands of this Court. Accordingly, present application is rejected.

(Y. G. KHOBRAGADE, J.)

JPChavan