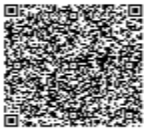


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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33894-2024 (O&M)
Date of decision: 22.08.2024

Ram Kumar

...Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhimany Jangra, Advocate
for the petitioner.

Mr. Vrishank Suri, Advocate
as *Amicus Curiae*.

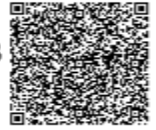
Mr. Vikas Bharadwaj, AAG, Haryana.

Mr. Subhash Godara, Addl. AG, Punjab
and Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking presentation of DNA analysis report in proceedings stemming from FIR No.46 dated 22.04.2022 under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 506 of the Indian

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Penal Code, 1860 (for short 'IPC'), registered at Police Station Women Central, District Faridabad.

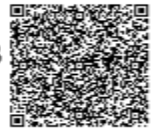
FACTUAL BACKGROUND

2. Briefly, the facts of the case are that the victim informed her mother, the complainant, that she has not menstruated in months. The complainant took the victim to B.K. Hospital where it was found that she is 8 months pregnant. The victim revealed to the complainant that the petitioner, who lives in their neighbourhood, has raped her several times and threatened to kill her if she disclosed the same to anyone. Subsequently, the victim delivered a female child on 23.04.2022.

3. Subsequently, the petitioner was arrested on 24.04.2022 from his village in Bihar and has been in custody ever since. On 18.05.2022, blood samples from the baby as well as the petitioner were received in the Forensic Science Laboratory at Madhuban, Karnal. The final report under Section 173 Cr.P.C. was presented on 31.05.2022 and charges were framed on 20.09.2022.

4. Recently, two other cases with identical prayers were listed before this Court. Unfortunately, in *Sandeep Vs. State of Haryana and another, CRM-M-31683-2024*, the petitioner-accused passed away during the pendency of the proceedings. In *Deepak alias Chor Vs. State of Haryana and another, CRM-M-31874-2024*, the matter involved rape and

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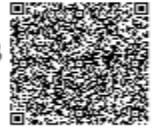
impregnation of an intellectually disabled minor girl, which has pricked the conscience of the Court. Therefore, Mr. Vrishank Suri, Advocate was appointed as *Amicus Curiae* to assist this Court in probing into the delay in presentation of FSL/DNA reports and its impact on the accused in custody as well as proffer recommendations to streamline the process.

CONTENTIONS

4. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case as he has never been intimate with the victim. Further, DNA analysis is an exact science and assists aplenty in determining the guilt of the accused and the report rendered in furtherance thereof is also scientifically accurate. However, no efforts have been made by the investigating agency to acquire the DNA report from the FSL. Not only the lackadaisical attitude of the prosecution has caused severe distress to the petitioner but also infringed upon his fundamental right to speedy trial, as envisaged under Article 21 of the Constitution of India.

5. Learned counsel for the State of Haryana submits that the FSL report already stands presented and it was concluded that the integrity of the samples has been compromised, and as such, DNA profile could not be obtained. He further submits that currently, while there exist four regional laboratories, DNA test is only conducted at the State Forensic Science Laboratory located in Madhuban, Karnal. However, another laboratory has

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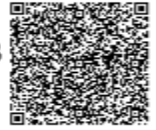


been approved to be established in Gurugram. In fact, the space and staff has been sanctioned for the same and the required machines have also arrived. The DNA tests required to be conducted in FIR cases are done free of charge, while those directed by the Family Court are conducted at a cost of Rs. 5,000/-.

6. Learned counsel for the State of Punjab submits that while there are three regional laboratories, DNA tests are only conducted in the State Forensic Science Laboratory at Mohali, free of cost.

7. Learned *Amicus Curiae* submits that it is settled law that granting the concession of bail is the sole discretion of the Court, therefore mere absence of DNA report cannot in itself be the reason to necessarily grant bail. In the same breath, it must be acknowledged that right to speedy trial forms a part of the fundamental right to life enshrined in Article 21 of the Constitution of India. Leaned *Amicus Curiae* relies upon Hon'ble Supreme Court in ***Javed Gulam Nabi Shaikh, 2024(3) R.C.R.(Criminal) 494*** to contend that irrespective of the seriousness of the offence alleged to have been committed by the accused, the trial must proceed without any unwarranted delay. Reference was also made to order dated 13.11.2019 passed by the Hon'ble Supreme Court in ***In Re: Alarming Rate In The Number of Reported Child Rape Incidents (2020) 7 SCC 108***, wherein it has been noted that the investigation remains incomplete in 20% of the case,

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even after a lapse of one year. The State Governments and the Union of India were directed to ensure all stages of the investigation and trial are concluded in a timely fashion, as envisaged by the POCSO Act, by creation of additional force for the former.

8. Learned *Amicus Curiae* further submits that a high social cost is borne by the accused and his family caused by his continuous unwarranted incarceration, due to inaction of the investigating agency. He concludes his submissions by making the following suggestions:

- Since the DNA report is required to be proved by the expert who prepared the report, in terms of Section 45 of the Indian Evidence Act, 1872, the loss of mandays may be overcome by allowing them to appear via video conferencing.
- District wise FSLs may be established to deal with the backlog.
- The vacancies in FSLs at all levels may be filled in a in a swift fashion.

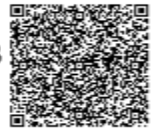
OBSERVATIONS AND ANALYSIS

9. I have heard the learned counsel for the parties as well as the learned *Amicus Curiae*.

A. *Balancing rights of the victim and the accused*

10. The right to fair trial is not only restricted to the accused but also extends to the victim and the society as well. While the right of the accused

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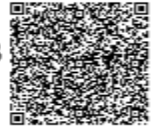
to fair investigation resulting in a fair trial is vociferously discussed, more often than not, little concern is shown to the victim and the society. The onerous duty to maintain a middle ground to secure fair investigation and trial of the accused, without sacrificing the interest of the victim and the society, is cast upon the Courts.

11. On the other hand, being portrayed as an accused creates an enormous psychological burden on the person portrayed as the accused. He is doomed to live in a constant state of fear and anxiety due to humiliation brought in by the blemish of being a perpetrator of a sexual offence. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

B. Speedy Trial

12. It is no longer *res integra* that the fundamental concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that the right to speedy trial is enshrined in Article 21 of the Constitution of India. The speedy trial would cover in its sweep

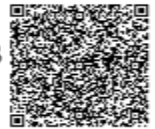
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investigation, trial, appeal etc. i.e. everything starting with the accusation and expiring with the final verdict of the last Court. No citizen can be deprived of his liberty under a procedure which is not reasonable, fair or just, such deprivation would be violative of Article 21 of the Constitution of India. The Seven Judges Bench of Hon'ble Supreme Court in ***Maneka Gandhi vs. Union of India and Another 1978(1) SCC 248*** has held that Article 21 of the Constitution of India confers a fundamental right on every citizen and not to be deprived of his life or liberty except according to the procedure established by law and such procedure is not merely some semblance of procedure but such procedure must be reasonable, fair. The right to speedy trial undoubtedly flows from this concept of fairness. It was observed that any procedure which does not ensure a reasonably quick trial, it would fall foul of Article 21 of the Constitution of India and the right to speedy trial is an integral and essential part of fundamental right to life and liberty enshrined in Article 21 of the Constitution of India. Reference can also be made in this regard to the landmark judgments of the Hon'ble Supreme Court in ***P. Ramachandra Rao vs. State of Karnataka (2002) 4 SCC 578***, ***Hussainara Khatoon vs. Home Secretary, State of Bihar (1980) 1 SCC 81***, ***Abdul Rehman Antulay vs. R.S. Nayak (1992) 1 SCC 225***, ***Common Cause A Registered Society vs. Union of India (1996) 6 SCC 775***.

13. A Constitution bench of the Hon'ble Supreme Court in ***P.***

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Ramachandra Rao (supra), speaking through Justice R.C. Lahoti, has made the following observations:

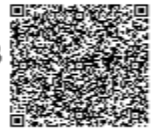
“No person shall be deprived of his life or his personal liberty except according to procedure established by law declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the Founding Fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principles of State Policy and alive to their constitutional obligation, the Courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem- of the journey which an accused must necessarily undertake once faced with an implication.”

14. A Constitution bench of the Hon’ble Supreme Court in **Abdul Rehman Antuley (supra)** has observed that the determination of the guilt or innocence of the accused must be arrived at with reasonable dispatch.

Speaking through Justice B.P. Jeevan Reddy, the following was opined:

“49. Now, can it be said that a law which does not provide for a

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reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declare so. Societal interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable dispatch-reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense

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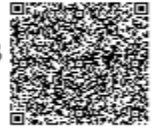
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82. The provisions of the Code of Criminal Procedure re consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains- unpleasant as it is-that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the Constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code.”

15. A two Judge bench of the Hon’ble Supreme Court has considered the impact of inordinate delay in conclusion of the investigation on the fundamental rights of the accused in ***State of Andhra Pradesh vs. P.V. Pavithran 1990 AIR Supreme Court 1266*** and it was concluded the

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investigation into a criminal offence must be concluded expeditiously.

Speaking through Justice S. Ratnavel Pandian, the following was observed:

“7. There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation.”

16. In fact, the right to speedy trial under Article 21 of the Constitution of India encompasses all the stages of investigation, inquiry, trial. There is no justification for subjecting a citizen to an indefinite period of investigation. The State is under obligation to ensure speedy justice to its citizens. The inherent fairness embedded in Articles 14, 19 and 21 of the Constitution of India makes it obligatory for the State to provide a procedure which is fair, reasonable and just. The investigating agency cannot be allowed to inflict more misery on the accused on account of persistent inaction as the same would amount to a direct violation of his right to life and liberty under Article 21 of the Constitution of India.

C. The Right against Self-incrimination

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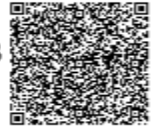
17. The DNA is unique to each individual and ascertainment of the same would facilitate the investigating agency in the impugning guilt on the right accused. Such scientific method is necessary for proving the guilt as well as innocence of the accused. In fact, when the victim of such crimes is a child of a tender age or intellectually disabled, DNA profiling becomes all the more significant. The law in this regard has been developed to an extent of creating a balance between the rights of the accused under Article 21 of the Constitution of India *vis-a-vis* the right of the victim in particular and the right of the society in general. The first and foremost duty of the investigating agencies and the Courts of law is to ascertain the truth which ensures fair play to all stakeholders.

18. Keeping the same in mind, the legislature, in its wisdom, inserted Section 53-A to the Cr.P.C. by Act 25 of 2005, which came into effect on 23.06.2006. The relevant part of the said provision reads as follows:

Section 53-A Examination of person accused of rape by medical practitioner-

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence

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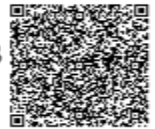


has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

19. In the landmark case of ***Smt. Selvi vs. State of Karnataka, 2010(7) SCC 263*** examined the apparent distinction between the testimonial evidence and physical evidence and laid down the ratio that providing specimen signature, handwriting sample or bodily substances such as blood, semen, sputum, sweat, hair can be characterized as physical evidence and the same would not attract the proscription under Article 20(3) of the Constitution of India.

20. Further, this Court in ***Dewan Singh @ Ram Singh vs. State of Haryana 2023(4) R.C.R. (Criminal) 17***, it was concluded that physical evidence can be utilized for explaining relevant facts within the meaning of Sections 9 and 11 of the Indian Evidence Act, 1872 and as such, a direction to the accused to provide blood samples would not amount to a violation of the right under Article 20(3) as well as Article 21 of the Constitution of India. It was further concluded that Section 53-A Cr.P.C. is mandatory in nature and denial by the accused to provide his blood samples would entail drawing of a negative inference by the Court. The medical practitioner as well as the investigating officer are bound to follow the drill of Section 53-A and 164-A Cr.P.C and the material collected during the investigation, which

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includes blood samples, must be sent for DNA profiling.

21. On one hand, a timeline is stipulated and Fast Track Special Courts are established under the POCSO Act to specifically deal with offences falling in the purview of the said statute, while on the other, the investigation as well as the trial continue to be delayed. This lackadaisical approach is suggestive of the lack of sensitisation of the officials involved and the lack of infrastructure for timely. A perusal of the affidavit tendered by the Commissioner of Police, Faridabad in compliance of order dated 08.07.2024 in *Sandeep vs. State of Haryana and others (supra)* indicates that in the last 5 years, in Faridabad alone, DNA report is awaited in 73 cases and the accused in 40 of these cases are currently in custody. Learned counsel for the State of Haryana has also informed the Court that DNA profiling of more than 10,000 unidentified bodies are currently pending.

22. Such indolent laxity on part of the investigating agency wields the potential to significantly clog the criminal justice administration mechanism. The investigation and the trial cannot be allowed to linger perpetually at the expense of the accused and keep the sword of Damocles hanging over his head. A delay of this nature in submitting the DNA reports that results in serious curtailment of liberty of undertrials is unbecoming of any welfare democratic State. A DNA report returning a negative finding could be instrumental to the accused in proving his innocence, however,

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delayed receipt of the same could result in unjustified incarceration of an innocent person. In fact, it also tramples upon the right of the victim to get speedy justice, especially in view of the fact that special legislations have been enacted for the purpose of providing speedy disposal of cases pertaining to crimes against women.

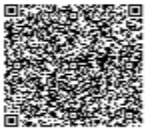
CONCLUSION

23. Taking into account the facts and circumstances of the case, the present petition is disposed of as the same has been rendered infructuous. However, the indolent laxity displayed by the investigating agency in obtaining the results of DNA profiling in a large number of cases has compelled this Court to take *suo motu* cognizance of the same. The Registry is directed to place the matter before Hon'ble the Chief Justice of this Court for listing before an appropriate bench.

24. Accordingly, *inter alia*, the following questions are framed for consideration:

1. Whether sufficient number of Forensic Science Laboratories at State and regional level have been established and adequately staffed in the States of Punjab, Haryana and Union Territory of Chandigarh to be able to handle the caseload?
2. Whether the opinion of the experts and doctors qua the DNA reports could be obtained via video conferencing facility in

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order to save mandays spent in travelling?

- 3. Whether any specific guidelines and regulations have been put in place stipulating a timeline to be followed by each stakeholder as well as proper management of the samples obtained?
- 4. Whether monitoring cells are required to be established at district level to oversee timely submission of samples to the FSL and the reports to the concerned Courts?
- 5. Whether a Standard Operating Procedure (SoP) has been issued by the concerned States and U.T. Chandigarh for collection and preservation of samples so their integrity is not compromised?

24. Before parting with this order, this Court would like to record its appreciation for the valuable assistance provided by Mr. Vrishank Suri as *Amicus Curiae*.

25. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

22.08.2024
vishnu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No