



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1371 OF 2025

Shrawan @ Sominath Bhaskar Borde,
Age : 26 years, Occupation : Nil,
R/o : Sillod Mangural, Tq. Sillod,
Dist. Aurangbad

.... **Petitioner**

Versus

The State of Maharashtra

.... **Respondent**

Advocate for the Petitioner : Mr. D. S. Ingole
APP for Respondent-State : Mr. D. J. Patil

CORAM : SACHIN S. DESHMUKH, J.

Date : 4th October, 2025

ORDER :-

1. The petitioner has challenged the order dated 11.09.2025 rendered by the learned Additional Sessions Judge – 2, Aurangabad in Sessions Case No. 507 of 2023 the petitioner is directed to provide the blood samples to the Medical Officer in pursuance of the application under Section 173(8) of the Code of Criminal Procedure (hereinafter “CrPC” for short).

2. The petitioner / accused No. 1 is facing prosecution

pursuant to the registration of Crime No. 170 of 2023 for the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code (hereinafter "IPC" for short). After completion of investigation, the Investigating Officer has filed charge-sheet in the Court of Judicial Magistrate First Class, Aurangabad. Thereafter, the case was committed to the Court of Sessions. Accordingly, the charge was framed against the accused persons including the petitioner.

3. In the interregnum, the Investigating Officer filed application under Section 173(8) of the CrPC, seeking direction to permit the prosecution to collect the blood samples of the Shrawan @ Sominath Borde (present petitioner) and Bhaskar Borde alongwith the mother of the deceased. The application was presented in the backdrop of the fact that the clothes of the deceased and the accused, weapons and different articles were collected during the investigation. Thereafter, it was forwarded to the Forensic Science Laboratory for chemical analysis. The chemical analysis report indicates that the report in respect of DNA profile vide RFSL ML Case No. DNAa-504/23 will be submitted in due course. However, in the subsequent report, it was indicated that the comparative DNA profiling will be provided after receipt of the

blood samples of the accused and the biological mother and father of the deceased.

4. In the light of the said report of the DNA profiling, the request was made by the Investigating Officer to collect the blood sample for forwarding the same to the Forensic Science Laboratory. The petitioner / accused objected the said application by filing say contending that the trial has already commenced and this is not the stage for collection of evidence. Therefore, application is not tenable. It was further submitted that one of the accused is in jail since long, therefore, now conducting the DNA profiling, having already carried out would results into delay in trial. As such, prayed for rejection of the application.

5. The learned Additional Sessions Judge, while acceding the request of the Investigating Officer, has allowed the application with a direction to provide the blood sample to the Medical Officer with a further direction to The Director of Forensic Science Laboratory, Aurangabad to submit the report at the earliest.

6. Raising an exception to the same, the petitioner has approached this Court under Article 226 and 227 of the

Constitution of India.

7. The learned counsel for petitioner submits that already the blood samples were collected during the course of the investigation. Once the investigation is completed, the Court has no powers to issue such directions. It is further submitted that once the trial commences, the exercise of further investigation taking recourse to Section 173(8) of CrPC is not permissible. However, the same can be exercised till filing of the charge-sheet. The supervisory jurisdiction of the Court ceases once the trial commences. Therefore, it would not be permissible to undertake the exercise of further investigation when trial has commenced. In support of the same, the learned counsel relied on the judgment of the Hon'ble Apex Court in the case of **Vinubhai Haribhai Malaviya and Ors. Vs. The State of Maharashtra and Ors (AIR 2019 SC 5233)**.

8. Per contra, the learned APP for State has supported the order under challenge submitting that already the blood samples are collected and the DNA profile report will be given after receiving fresh blood samples of accused and biological parents of the deceased. As such, it is rather expedient in the interest of

justice to have the comparative DNA profiling result. Therefore, blood samples of the accused and biological parents of the deceased is rather warranted.

9. The learned APP further submitted that having already collected the blood samples in order to have comparative DNA profiling result, will not cause prejudice to the accused as the accused has liberty to either admit or deny the DNA report or even when recall the relevant witnesses, who have collected the samples for further cross-examination. In support of contentions, the learned APP has placed reliance on the judgment of the Hon'ble Apex Court in the case of **Anant Thankur Karmuse Vs. The State of Maharashtra and Ors. [(2023)3 SCR 56]** and **Ramchandraiah Vs. M. Manjula (AIR Online 2022 Kar 1248)**.

10. Having heard the respective counsel for litigating sides, perused the entire record, the fact remains that in order to do complete justice, the Courts have express powers to direct the further investigation past filing of the charge-sheet under Section 173(2) of the CrPC and may also exercise such powers with the aid of Section 156(3) of the CrPC.

11. While giving wider interpretation to Section 173(8), has been effected in the wake of the verdict of the Hon'ble Apex Court in the case of **Hemant Dhasmana Vs. CBI [(2007)1 SCC 536]**, the Hon'ble Apex Court has held that in exercise of powers under Section 173(8) of the CrPC, the Court can direct to carry out further investigation of the case and collect further evidence keeping in view the objection raised by the accused to the investigation and the 'new report' to be submitted by the Investigating Officer would be governed by Sub-sections (2) to (6) of Section 173 of the CrPC. Even after filing of final report, the Court can also take cognizance on the basis of additional material placed on record by the Investigating Officer.

12. It is permissible to the Court to direct further investigation. The conduct of proper and fair investigation is the hallmark of the criminal investigation. In the case of **Vinya Tyagi Vs. Irshad Ali and Ors. [(2013)5 SCC 762]**, the Hon'ble Apex Court reiterated the same by placing reliance on the case of **Ramchandraiah** (supra) upholding the aforesaid principles.

13. Nevertheless, the necessary reliance can be had to the observations of the Hon'ble Apex Court in case of **State of Gujrat**

Vs. Kinshanbhai and Ors. [(2014)4 SCC 108], the Hon'ble Apex Court, considering the advancement in the field of Medical Science, has observed that the investigation should not be hasted in taking aid of the modern scientific methods. It has been further observed that scientific investigation would unquestionably determine whether or not the respondent was linked with the crime. Additionally, the DNA profiling of the blood found on the clothes of the deceased would uncontrovertably determine the issue of involvement of the petitioners. Thus, the endeavour be made to avail the benefit of advancement in the filed of forensic science for an effective investigation so as to genuinely determine the culpability of the accused persons.

14. Thus, in the light of the aforesaid aspect, the objection raised by the petitioners does not warrant any consideration. The Additional Sessions Judge has considered the application in its proper perspective permitting the Investigating Officer to collect the blood samples of the accused persons and the biological mother of the deceased.

15. It is in coherence with the principle of fair and proper investigation, which is the hallmark of criminal investigation. In any case, the petitioner / accused is at liberty to admit or deny the DNA

Report or even to recall the relevant witness/es, who has collected the said samples for further cross-examination. As such, no prejudice would be caused to the petitioner.

16. Resultantly, the order rendered by the learned Additional Sessions Judge does not warrant any interference. Accordingly, the writ petition stands **dismissed**.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi