

08.05.2026

Sl. No.03.

D/L.

Mithun.

Ct.No.29.

CRR/1963/2025

Masud Sk. @ Masadul Hossain

Vs.

The State of West Bengal & Anr.

Mr. Bikram Banerjee,
Mr. Baibhav Roy

...for the petitioner

In this application the petitioner has challenged the judgment and order dated 21st March, 2025 passed by Additional Sessions Judge, Fast Track, 2nd Court, Jangipur in Criminal Revision Case No.33 of 2024. By the impugned order learned Court below has affirmed the order dated 11th November, 2024 passed by learned Additional Chief Judicial Magistrate, Jangipur in M.R. Case No.259 of 2020.

The genesis of the disputes arises from an application filed under Section 125 of Cr.P.C. by the opposite party herein, who has alleged a relationship at the promise of marriage against the petitioner and also birth of a child due to such alleged relationship.

However petitioner herein categorically denies any such relationship or promise of marriage or paternity of the child and has alleged that the entire claim is fictitious and fabricated and has been lodged with a mala fide motive to extract maintenance and also to stigmatise the petitioner. His further case is that earlier one criminal proceeding under Sections 376/417 IPC was initiated

against the petitioner by the same opposite party and by a judgment dated 23rd June, 2017 passed in Sessions Trial Case No.01(11)15, Fast Track Court, Jangipur, has acquitted the petitioner on the ground that during investigation no DNA test was conducted, nor there is any evidence in support of medical examination of the victim to ascertain as to whether she was pregnant at that relevant point of time or that the petitioner was responsible for the victim's pregnancy.

In the instant maintenance case, the petitioner herein made a prayer before the Trial Court for DNA test of the child, which was turned down by the Trial Court with the observation that the instant case involves purely a claim of maintenance, wherein strict proof of paternity through DNA test is not required and furthermore the case has reached at the stage of hearing argument and, therefore, Court was of the view that the prayer is liable to be rejected as it has been filed to drag the case.

Being aggrieved by the said order of trial court, when the petitioner preferred a revisional application, the revisional Court held that the said child was born on 21.09.2014 and the petitioner has been fathered in the birth certificate and, therefore, he came to a conclusion that the petitioner cannot deny his liability, when the instant case involves only prayer for maintenance. He also observed that the DNA test cannot be allowed at this final stage of hearing and that a considerable period of time has already been passed, since the opposite party has knocked the door of justice seeking maintenance.

It appears from record that initially the petitioner sent copy of application to opposite party, which could not be served and thereafter as per Court's order, the State filed a report which contains that the copy of application has been duly served upon the opposite party herein but the opposite party was not represented. Thereafter, by an order dated 24.04.2026, the petitioner was again asked to serve a copy of notice upon the private opposite party through speed post which has been complied by the petitioner and the postal track report discloses that it was duly served upon the opposite party on 07.05.2026. In spite of such repeated service, the opposite party is not represented. Accordingly, I have reason to believe that the opposite party is not interested to contest the instant application.

Having heard learned Counsel for the petitioner, it appears that both the Courts below are of the view that the hearing of the maintenance application has reached at argument stage and, therefore, the petitioner's application for DNA test has been filed merely to drag the proceeding and furthermore in a proceeding under Section 125 Cr.P.C., the DNA test is not desirable.

Therefore, the question that has to be answered in this case is whether the petitioner's challenge of fatherhood of the child can be resolved by conducting DNA test, while considering an application for maintenance under Section 125 Cr.P.C.

Here, the petitioner has categorically made assertion in the petition filed by him that he did not have any access to Opposite Party at any point of time and, therefore, the opposite party's claim

of fatherhood of the child born to her is blatant lie. In the process of substantiating his allegation, denying his fatherhood, the petitioner made the said application before the Trial Court for conducting a DNA test.

Learned Counsel for the petitioner strenuously argued that whether he had fathered the child or not and for that purpose whether he is liable to pay maintenance to that child, can only be determined through a DNA test. He further argued that DNA testing is the most legitimate and scientifically perfect means and for conducting such examination he is agreeable to bear all the expenses to establish his assertion that he has not fathered the child.

In **Goutam Kundu Vs. State of West Bengal**, reported in **AIR 1993 SC 2295**, Supreme Court has laid down the guidelines on DNA evidence to understand the delicate balance, which the courts are required to maintain between biological truth and child protection. Guidelines are as follows:-

- (1) that courts in India cannot order blood test as 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.*

In the instant case petitioner has specifically denied any such relationship with the opposite party and that he had any access to the opposite party at the relevant point of time. In support of such contention he placed reliance on the acquittal

order passed by a competent court in connection with opposite party's allegation of committing rape upon her by the petitioner. Such statement of petitioner about his non accessibility remains uncontroverted and unchallenged. Therefore petitioner in the absence of any denial, prima facie is able to satisfy this court about his non-accessibility at the material time. Therefore, applying the principle laid down in **Gautam Kundu's case** (supra) it cannot be said that petitioner's prayer is not sustainable in the eye of law. However at the same time considering the consequence of ordering the blood test, the opposite party cannot be compelled to give sample of blood for analysis, though in that case court will always be at liberty to draw adverse presumption.

Both the Courts below observed that since the matter has attended at the stage of argument and since the issue involved is confined prayer for maintenance only, the prayer for DNA test cannot be allowed, is a perverse finding and is not sustainable in the eye of law.

In such view of the matter, the impugned orders dated 21st March, 2025 and 11th November, 2024 passed in M.R. Case No.259 of 2020 are hereby set aside.

The Trial Court is directed to allow the petitioner's prayer for DNA test of the child. In case, the opposite party accept the direction of the Trial Court, the DNA test will determine conclusively the veracity of the accusation levelled against the petitioner herein. However, if she declines to comply with such direction, the Trial Court will not insist/compel her to go for DNA

test, but the allegation would be determined by the Court concerned by drawing a presumption of the nature contemplated in Section 114(h) of the Evidence Act. By adopting such course of DNA test, only the limited question as to whether the petitioner has fathered the child or not would be determined for the purpose of disposal of opposite party's maintenance application.

However, I make it clear that I have not gone into the merits or de-merits of the petitioner's prayer for maintenance, which the Court below will dispose of in accordance with law, uninfluenced by any observation made herein. The observations made herein are confined to the legality and validity of the order in connection with the prayer for DNA test of the child only.

CRR 1963 of 2025 is thus disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)