



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APPA) NO. 761 OF 2024

IN

CRIMINAL APPEAL NO. 252 OF 2024

(Raisingh s/o Bhagrath Thakursingh Mewad ..vs.. State of Maharashtra, through PSO, PS Kalmeshwar,
Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.K. Bhangde along with Mr. M.S. Gulati, Mr. M.S. Deogade, Mr. N.K. Bhangde,
Counsel for the appellant,
Mr. S.A. Ashirgade, Addl.P.P. for the respondent/State.

CORAM : ANIL L. PANSARE & NIVEDITA P. MEHTA, JJ.

DATED : 27th JANUARY, 2026

Heard. The prosecution case is based on circumstantial evidence.
The trial Court considered following circumstances:

- A. Motive,
- B. Last seen circumstance,
- C. Abscondence of the accused after the incident,
- D. Seizure of incriminating articles from the scene of the crime,
- E. Discovery of the weapon of assault and clothes of the accused,
- F. Medical evidence,
- G. Forensic evidence,
- H. Failure of the accused to explain incriminating circumstances against him.

2. Out of the above, the trial Court found that evidence led to be weak on proof of motive, last seen circumstance and abscondence of the applicant after the incident. The applicant's involvement in the crime is mainly based on the DNA report (Exhibit 37). The trial Court held that the DNA profiling obtained from blood found on the nail clippings of the deceased and the blood detected on the Jeans pant of the applicant were

identical and from one and the same source of male origin and matched with DNA profiling obtained from the scalp hair of the deceased.

3. The argument is that the expert who conducted the DNA examination was not examined by the prosecution. DNA report was marked exhibit in the evidence of the Investigating Officer. The applicant, therefore, did not get opportunity to test the credibility of this evidence.

4. The learned Counsel for the applicant has invited our attention to the judgment of the Hon'ble Supreme Court in the case of ***Karandeep Sharma alias Razia alias Raju v. State of Uttarakhand, 2025 SCC OnLine SC 773***, wherein the Court, in context with the evidence of DNA, held thus

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*“39. The first flaw in the prosecution case on the aspect of DNA profiling is that the expert who conducted the DNA examination was not examined in evidence and the DNA report was merely exhibited in evidence by the Investigating Officer (PW-14) who undeniably is not connected with the report in any manner. This Court in the case of *Rahul v. State of Delhi, Ministry of Home Affairs*, while dealing with the issue concerning evidentiary value of DNA report, has held that DNA profiling reports cannot be admitted in evidence ipso facto by virtue of Section 293 CrPC and it is necessary for the prosecution to prove that the techniques of DNA profiling were reliably applied by the expert. The relevant excerpts from the said judgment are reproduced hereinbelow for the sake of ready reference: -*

*“36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the DNA profiling dated 18-4-2012 (Ext. P-23/1), giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant-accused. The Court finds substance in the said submissions made by the Amicus Curiae. **The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.***

38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion."

(emphasis supplied)

40. Thus, in the facts and circumstances of the present case, non-examination of the scientific expert who carried out the DNA profiling is fatal, and the DNA report cannot be admitted in evidence. -----"

5. Thus, the Hon'ble Supreme Court held that since the scientific expert who carried out the DNA profiling was not examined, the DNA report was inadmissible in evidence.

6. Similar is the case before us where the expert witness has been not examined. The reliance placed by the trial Court on the DNA report to find nexus of the applicant with the crime is, therefore, based on inadmissible evidence.

7. The learned Additional Public Prosecutor submits that the DNA report could be read in evidence in terms of Section 293 of the Code of Criminal Procedure. Accordingly, argued that the finding of the trial Court cannot be faulted with.

8. We are not impressed with the argument of the learned Additional Public Prosecutor inasmuch as marking of document as exhibit is one thing and affording an opportunity to challenge the testimony is another, particularly where the report under question pertains to DNA analysis. The Hon'ble Supreme Court has in unequivocal terms held that non examination of expert in such cases is fatal.

9. That being so, the applicant has made out a case for suspension of sentence. Hence, the following order.

10. The application is allowed. The substantive sentence imposed upon the applicant by the learned Additional Sessions Judge, Nagpur in Sessions Case No. 308/2021 convicting the applicant under Section 302 of the Indian Penal Code is hereby suspended pending final disposal of the criminal appeal.

11. The applicant-Raisingh s/o Bhagrath Thakursingh Mewad shall be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or two sureties in the like amount, to the satisfaction of the trial Court.

12. The applicant shall monitor progress of appeal and shall remain present before the Court at the time of final hearing of the appeal.

The Criminal Application stands disposed of accordingly.

Criminal Appeal No.252/2024.

List the appeal for final hearing in the week commencing from 23-02-2026.

(Nivedita P. Mehta, J.)

(Anil L. Pansare, J.)