



CRR-735-2025

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-735-2025

Decided on : 20.03.2025

Altaf

... Petitioner

Versus

State of Haryana and another

... Respondents

**CORAM: HON'BLE MS. JUSTICE KIRTI SINGH**Present : Mr. Mazlish Khan, Advocate  
for the petitioner

Ms. Mahima Yashpal, DAG Haryana

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**KIRTI SINGH, J. (Oral)**

The instant petition has been filed for setting aside order dated 18.02.2025 passed by learned Additional Sessions Judge at the Fast Track Special Court for the trial of offences under the POCSO Act, Nuh whereby the application for re-conducting of DNA test was rejected.

2. Shorn of details, the facts of the case in hand are that the present FIR was registered on the statement of father of the prosecutrix, that his younger daughter, the prosecutrix, was taken to the forest by his elder daughter for collecting fodder, where she was raped by the petitioner and co-accused Kayyum. The petitioner was arrested on 27.10.2020, his blood sample was taken and thereafter sent to RFSL Bondsi, report of which turned out to be positive. Thereafter an application for re-conducting the DNA test was moved after prosecution evidence was closed, which was rejected vide impugned order dated 18.02.2025. The present petition has been filed challenging the said impugned



**CRR-735-2025**

order.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He submits that the elder daughter of the complainant solemnized marriage with co-accused Kayyum, against the wish of the complainant, which led him to file the present FIR, in which the petitioner was named on the misunderstanding that he is the brother in law of co-accused Kayyum. He further contends that the petitioner was arrested on 27.10.2020 and his blood samples were collected on the same day, however, the date mentioned in the application made to the Medical Officer, Civil Hospital, Punhana is of 28.10.2020, indicating a discrepancy. It is further contended that the blood sample of the accused was allegedly sent by the investigating agency to the FSL after a delay of 19 days, hence, possibility of tampering with the blood sample could not be ruled out. It is argued that on similar facts, in the case of ***Mohit vs., State of Haryana CRA-D-1104 of 2019 (O&M)*** decided on 15.12.2022, delay of five days in sending of the sample to the FSL was held to be material and created doubt about the authenticity of the samples and accuracy of the DNA profiling results.

4. Learned State counsel while, staunchly opposing the prayer made, by questioning the maintainability of the petition at this stage, contends that no such objection was raised before the trial Court at the time of prosecution evidence and no opportunity to conduct a cross examination also was sought. The present petition is nothing more than a dilatory tactic of the petitioner. It is clearly mentioned in the FSL report that the seals of the sample received at FSL were intact. It is also not the case where the samples were compromised and/or recorded as unfit for testing. Further, the accused did not argue on any such ground when he had the rightful opportunity, and now he must not be permitted to



**CRR-735-2025**

wake up from his slumber and question the sanctity and the samples merely because the outcome of the DNA report is not in his favour.

5. Heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court finds no force in the arguments advanced by learned counsel for the petitioner. The present petition is decided *in limine* in order to save litigation cost of the private respondent and also to save the judicial time of the Court.

6. The relevant portion of the impugned order dated 18.02.2025 is reproduced as below :-

*“In light of the aforesaid discussion, no ground is made out for directing re-conducting of DNA test of accused in this case. Prosecution claims that accused seeks such a direction merely because his DNA report is positive. However, no bias has been attributed to the FSL experts, by the accused, who seeks resampling of his DNA sample. Apart from his bald assertions that the FSL authorities had prepared the report at instance of the investigating agency, there is nothing on record to substantiate the said allegation. Applicant is an accused in this case and that has no locus standi to intervene in the investigation proceedings regarding collection of evidence. The accused, however, can challenge the evidentiary value of the evidence led by Prosecution or rebut the same by leading evidence in defence. The application is devoid of merit and stand dismissed. However nothing mentioned herein shall be deemed to be an expression of my opinion on merits of the case or on the reliability and evidentiary value of the FSL reports produced in evidence by Prosecution.”*

7. Determining the point of admissibility of a DNA report, the Hon’ble Supreme Court in ***Mukesh v. State for NCT of Delhi, 2017 AIR Supreme Court 2161***, conclusively held that:



*“224. ...From the aforesaid authorities, it is quite clear that DNA report deserves to be accepted unless it is absolutely dented and for non-acceptance of the same, it is to be established that there had been no quality control or quality assurance. If the sampling is proper and if there is no evidence as to tampering of samples, the DNA test report is to be accepted.”*

8. In *SS. Veeralakshmi v. Superintendent of Police, Madurai Distt., Madurai, 2015(11) RCR (Criminal) 240*, the Madras High Court upheld the decision of the trial court dismissing an application seeking a second DNA test to establish paternity of an accused in an FIR under Sections 376, 417 of I.P.C. and 3(1)(xii) of SC/St Prevention of Atrocities Act, 1989. It was held that:

15. In view of the facts and circumstances and having regard to the decisions of the Hon'ble Supreme Court and this Court narrated above, *this Court is of the view that it is not appropriate to order for second DNA test*. As already discussed supra, when the report of the DNA test conducted earlier was available on the file, which was given by the Scientific Officer, Regional Forensic Science Laboratory, Madurai against which, no reasonable defect was pointed out or any allegations of mala fide were made out against the said expert by the petitioner, the same cannot be easily brushed aside merely based on her surmises and bald and vague allegations. *The order of this Court, dated 13.04.2010 in CrI.R.C.(MD)No.567 of 2008 relied on by the petitioner cannot be made applicable to the present case. In the said case, already, the Court below had ordered second DNA test while cancelling the earlier report on the ground that it was obtained by the influence of a doctor known to the revision petitioner therein whose favour, the result came and while confirming the order of the Court, this Court ordered second DNA test without dealing with the issue in extenso and moreover, in the present case, it is not the case of the petitioner that the report has been obtained by the influence of the expert. If at all*



*the petitioner is aggrieved over the defects in collecting the blood samples and sending it to the Laboratory, etc., it is for the petitioner first to prove same before seeking for second DNA test .*

*16. For the foregoing discussion, this Court is of the view that the Criminal Original Petition is liable to be dismissed.*

*Accordingly, while dismissing the present Criminal Original Petition, this Court could emerge the following in the matter of ordering second DNA test .*

*vi) The Courts cannot compel the parties to undergo DNA test for the second time;*

*vii)The earlier DNA test cannot be treated as doubtful or set aside mere based on bald and vague allegations made by the party against whom the result of the said test was declared negative;*

*viii)When already DNA test report is available, there is no need to order second DNA test unless it is proved by the party who raised objections, that it has been exposed to reasonable degree of suspicion and the said report has been obtained by the influence of the Expert who gave the report;*

*ix) Direction to conduct DNA test more than once cannot be granted since it would lead to unhealthy practice where the parties repeatedly seeking to send the sample till they get a favourable report and different reports may also lead to confusion;*

*x) DNA test report is only a piece of evidence (though of course a strong piece of evidence) in determining the paternity of a child, but it is to be noted that the said report is to be analysed along with the facts and other evidence to be adduced by the parties in support of their case. It is always open to them to raise objections regarding the DNA test during the course of trial;*

*xi) In order to avoid unnecessary doubts in the minds of the parties, it is necessary that the blood samples of the parties concerned are to be taken in the presence of each other and send to the lab and the entire process is to be recorded by video at the expenses of the party who is interested in such video recording.”*



9. Recently, the Allahabad High Court made similar observations in its judgment dated 17.05.2023 in *Yaspal @ Yash v. State of U.P., Application under Section 482 No. - 12548 of 2023*, and held that:

*“5. Mr. Kapil Tyagi, learned Counsel for the applicant has strenuously argued that there could be tampering and the report of the Forensic Science Laboratory does not inspire confidence. Since, upon the result of the D.N.A. examination much of what the applicant has to say in defence depends, a fresh D.N.A. test for the victim, the child and himself is necessary to secure the ends of justice.*

*6. This Court cannot agree. The reason is that it is not said by the applicant on the basis of any evidence pointed out as to what particularly is the fact or events that makes him suspect the D.N.A. report. The D.N.A. report that is already on record, cannot be condemned merely on the applicant's conjecture or a fear in his mind about its fidelity. There has to be some tangible evidence to doubt its correctness.*

*7. Ex facie, before a further D.N.A. test can be directed, some demonstrable flaw in the earlier report has to be shown. That has not been shown by the applicant. This Court, therefore, finds no infirmity in the order impugned.”*

10. Reverting to the case in hand, a perusal of the case file reveals that the authenticity of the FSL report dated 30.12.2022 was not questioned by the petitioner at any time before, or even during prosecution evidence. Thus, the petitioner cannot be allowed, at this belated stage, to seek fresh conducting the DNA test, especially when its correctness was not challenged when the petitioner had a fair opportunity. Nonetheless, the petitioner would have a chance to demonstrate any flaw in the FSL report at the time of defence evidence.

11. Learned counsel for the petitioner has not been able to indicate any



**CRR-735-2025**

**7**

perversity in the impugned order which warrants interference by this Court. Accordingly, the present petition is dismissed being bereft of any merit.

12. Pending miscellaneous application(s), if any, also stand(s) disposed of.

**(KIRTI SINGH)  
JUDGE**

**March 20, 2025**  
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Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No