

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO**

**I.A.No.1 of 2025
IN
Crl.A.No.305 of 2025**

Sri P. Krishna Prakash, learned counsel for the appellant.

Sri M. Rama Chandra Reddy, the learned Additional Public Prosecutor appearing for the respondent-State.

ORDER: *(per Hon'ble Justice Moushumi Bhattacharya)*

1. The petitioner/appellant seeks permission for a second DNA Test by offering fresh blood samples and for comparing the same with the samples earlier drawn and preserved by the prosecution.

2. The petitioner was the Accused No.1 before the Trial Court in Sessions Case PCS No.70 of 2022. By the impugned judgment dated 30.12.2024, the petitioner/A.1 was found guilty of the offence under section 5 read with section 6 of The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and was sentenced to rigorous imprisonment for Life and a fine of Rs.10,000/-. The Accused No.2 was found guilty of the offences under section 5 read with section 6 of the POCSO Act and section

506 of The Indian Penal Code, 1860, and was sentenced to rigorous imprisonment for 20 years and 2 years, respectively.

3. The particulars of the factual matrix before the Trial Court or the substantive challenge to the impugned judgment are not relevant for the present I.A. since that would be the subject matter of the Appeal. The only point of relevance is whether the petitioner/A.1 should be permitted to undergo a second DNA Test.

4. The short point is whether the petitioner has made out a case of procedural lapses in the conduct of the first DNA Test or whether the conclusions in the DNA Test Report give rise to unanswered questions.

5. The brief facts which are relevant only for the purposes of the present I.A. are as follows:

6. The victim was about 16 years of age on the date of the incident. The petitioner/A.1 is a neighbour whose name was subsequently added based on the statement of the victim at the Bharosa Center before the Sub Inspector of Police and during the Medico-Legal Examination conducted by the Medical Officer at

Bharosa Center. A.2 is a member of the extended family of the victim. The petitioner's name did not feature in the First Information Report (FIR) dated 24.09.2021. The FIR mentioned only A.2 as the perpetrator.

7. The petitioner/A.1 was convicted by the Trial Court solely on the basis of the DNA Test and the conclusion drawn therefrom was that the petitioner is the biological father of the foetus. The Trial Court also concluded that the DNA Test established that the petitioner had committed sexual assault on the victim and that the petitioner had not taken any defence denying these allegations.

8. Learned counsel appearing for the petitioner/A.1 and the learned Additional Public Prosecutor have made their respective submissions.

9. We have considered the material relied on behalf of the petitioner for the second DNA Test.

10. The Additional Public Prosecutor prefaces his submissions by stating that the prosecutor would not be prejudiced by a second DNA Test and that the petitioner failed to raise any objection

against the DNA Report before the Trial Court or to take any steps for re-analysis of the same.

11. Admittedly, the DNA Report was issued by Dr. G.Pandu, Assistant Director, Telangana State Forensic Science Laboratories, Hyderabad, on 27.12.2021, and was approved and countersigned by the Joint Director, TSFSL, Hyderabad. However, the letters of the Assistant Commissioner of Police referred to in the said Report *vide* Letter No.63/FSL/ACP-SBZR-D/2021, dated 11.10.2021 and Letter No.67/FSL/ACP-SBZR-D/2021 dated 22.10.2021 were not marked as exhibits, which is mandatory for proving the chain of custody of the DNA Test material.

12. Moreover, the result of the examination uses the word 'conclusively' with regard to the petitioner being the biological father of the source/foetal tissue and cord blood. The 'Note' to the DNA Report states that the entire case property (blood, foetal bone and tissue) 'are used up during the examination'.

13. It is important to remember that the only definitive conclusion which may be drawn in cases of paternity is when the DNA Test result does not match; in such cases, the identity of the

person is not established. However, the contrary cannot amount to a 'conclusion': *Kamti Devi Vs. Poshi Ram*¹. This judgment was referred to by Division Bench of the Gujarat High Court in *Premjibhai Bachubhai Khasiya Vs. State of Gujarat*².

14. Learned counsel appearing for the petitioner has relied on material to argue that a single test requires only a microscopic quantity (0.5 to 1.0 nanograms of DNA). The evidence of the P.W.9 (medical doctor) shows that 100 grams of tissue of the right femur bone of the foetus was handed over to the Investigating Officer. Hence, the entire tissue being used up for a single examination is unusual and raises a suspicion as to the notice as well as the procedure adopted for the test.

15. The Additional Public Prosecutor has fairly submitted that a second DNA Test will not cause any prejudice to the Prosecution. The factor which however weighs with us is that the petitioner was 76 years old on the date of drawing of the blood sample. The petitioner's age is mentioned in the DNA Report dated 27.12.2021. This means that the petitioner is 80 years of age today.

¹ (2001) 5 SCC 311

² 2009 Cri LJ 2888

16. The challenge to the impugned judgment will be tested on its merits and the evidence placed before us. In the interregnum, we cannot be oblivious to the fact that the petitioner, being a 80-year-old man, continues to remain under the cloud of the impugned conviction based solely on the DNA Test result. An accused person has a continuing right to defend himself/herself which includes presenting the best possible evidence before the Court to prove his/her innocence. A conviction does not extinguish that right, particularly where a doubt regarding the veracity of a crucial piece of evidence has the potential of that evidence being discarded altogether. The need to dispel any possibility of fabrication or foul play is of utmost importance where the life and liberty of a person convicted of an offence teeters on the evidence (the DNA Report in this case).

17. Therefore, in our view, even if there is an iota of doubt as to the sanctity of the procedure or the correctness of the evidence, the accused should be given an opportunity to disprove the earlier test result.

18. The questions asked on behalf of the accused in relation to the DNA Test Report are sufficient to warrant a second examination. None of the questions have been satisfactorily answered by the Prosecution. The gaps must be addressed to the Court's satisfaction, especially where the entire case of the prosecution rests on the findings in the DNA Report. A Single Bench of the Madras High Court in *MuthuKumar Vs. Superintendent of Police*³ directed the Judicial Magistrate and the concerned Medical Officer to draw fresh samples for conducting a second DNA Test upon finding that such a course of action was warranted in the particular circumstances.

19. We cannot also discount the extreme risk taken by the petitioner in requesting for a second DNA Test. It would indeed be a suicidal move on the part of the petitioner had the petitioner to subject himself to a second test and have the earlier DNA Report confirmed in the process. No person would take that risk unless he is certain of the outcome of the second test. This fact alone persuades the Court to allow the application.

³ 2019 SCC OnLine Mad 32750

20. For facilitating our order, it is relevant to note that the Report mentions an electropherogram (10 pages enclosed therewith), which confirms that the Full Report including electropherogram is available in the official computer/Records of the TSFSL. The same can be generated if required or the data can be transferred for correlation with the fresh blood sample drawn from the petitioner. The Court is informed that the relevant files (DNA/400/2021 and 414/2021) in connection with the crime are presently in the custody of the Director, TSFSL, Red Hills, Hyderabad.

21. I.A.No.1 of 2025 is accordingly allowed for the reasons stated above. The petitioner is permitted to take a second DNA Test by offering fresh blood sample(s). We also permit the second DNA Test to be conducted at the Centre for DNA Fingerprinting and Diagnostics CDFD, Uppal, Hyderabad, in view of the apprehension expressed on behalf of the petitioner with regard to the manner of conducting the previous test. The petitioner shall be at liberty to approach the concerned Judicial Magistrate for appropriate directions on the Medical Officer for drawing fresh samples for conducting the second DNA Test. The DNA Testing process shall

be completed within eight weeks from the date of receipt of a copy of this order. The petitioner shall bear the expenses incurred for the DNA Test. The petitioner shall also be at liberty to file a necessary application upon receipt of the DNA Test Report, if required.

22. This order should also be communicated to the jail authorities of the Central Prison, Chanchalguda, for deputing the Superintendent or a high-ranking officer for giving necessary assistance to the appellant for implementing this order.

MOUSHUMI BHATTACHARYA, J

B.R.MADHUSUDHAN RAO, J

27th June, 2025.

Note: Furnish C.C. today.
(B/o. VA)