

Special Case no. 08 of 2022
CNRWBBK090000832022

Arising out of Taldangra P.S. case no. 14 of 2022 dated 14.03.2022 U/s 376(2)(n) of I.P.C and section 6 of POCSO Act.

Order No. 11
Dated 13.12.2022

Today is the date fixed for hearing of the petition dated 30.11.2022 filed by the I.O. of this case.

Ld. Special Public Prosecutor of this case is present.

Ld. Advocate for the accused person is present.

I.O. of this case is present.

C.D of this case is produced.

The petition dated 30.11.2022 filed by I.O of this case is taken up for hearing.

Ld. Special Public Prosecutor of this case has submitted that I.O of this case has filed a petition praying for passing necessary order for DNA profiling of the accused person, victim and baby of the victim, because that is necessary for the proper adjudication of this case.

Ld. Advocate for the accused person has vehemently opposed the said prayer of the prosecution, and submitted that allowing this petition of the I.O. will amount to violate the fundamental rights of the accused person, that is right to privacy and rule against self incrimination. He has further submitted that, as per the procedure of law, DNA profiling should be used only in the rare cases. He prays for rejecting the petition dated 30.11.2022 filed by I.O of this case.

I have heard the submission of the Ld. Special Public Prosecutor of this case, and Ld. Advocate for the accused person and perused the records. From the records, it is revealed that in this case, case has been initiated against the accused person U/s 376(2)(n) of IPC and under section 6 of the POCSO Act. It is fact that, Court has no power to order for taking sample of the accused person in all the cases for DNA profiling considering right to privacy of the accused person and fundamental right of the accused person under Article 20(3) i.e. right of self incrimination, casually but in extraordinary situation Court has power to order for medical examination of the accused person for DNA profiling.

It is settled law that, there are reasonable restrictions on the fundamental rights of the accused person under article 20(3) and under Article 21 of the Constitution, and in the interest of justice that restrictions may be imposed, and due to that reason legislature has incorporated section 53A of the Cr.P.C. U/s 53A of the Cr.P.C following conditions are required for medical examination of the accused person:-

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(i) Accused person must be arrested on the charge of committing an offence of rape.

(ii) There must be reasonable ground for believing that examination of accused person will afford evidence as to the commission of such offence.

It is fact that, in this case there is no controversy regarding the paternity of the child, that is generally considered as a legitimate ground for DNA profiling. It is also fact that, DNA profiling of this accused person may help the prosecution to establish allegation against the accused person for the commission of the alleged offence as in general pregnancy is one of the consequence of the offence of rape of unmarried victim.

From the contents of the petition filed by I.O, it is revealed that victim of this case has delivered a child and the said child is at Chamtagora Adoption Center under Chatna Police Station, Bankura under supervision of C.W.C, Bankura. Considering that DNA Profiling of victim accused and child of the victim is necessary in the interest of justice, so all the concern including C.W.C, Bankura, M.S.V.P, Bankura Sammilani Medical college and Hospital, Superintendent, Bankura District Correctional Home are directed to take necessary step for completing DNA profiling of the victim, accused person and child of victim in this case as soon as possible without effecting the health of new born child of victim.

hence, it is

ORDERED

that Superintendent Cum Vice President of Bankura Sammilani Medical College and Hospital is directed to take steps for DNA profiling of the accused person, victim and child of victim of this case as soon as possible without effecting their health.

Superintendent, Bankura District Correctional Home is directed to take steps for handing over the accused person for DNA profiling to the I.O. of this case as per the schedule and time fixed by the Superintendent Cum Vice President of Bankura Sammilani Medical College and Hospital, ensuring the safety and security of the accused person, and take back the accused person after completing the process.

I.O. of this case is directed to coordinate with the Superintendent Cum Vice President of Bankura Sammilani Medical College and Hospital, Superintendent, Bankura District Correctional Home and C.W.C, Bankura for taking steps for DNA profiling of the accused, victim and victim child.

CWC Bankura is also directed to take necessary steps for completing DNA Profiling of the victim and her child.

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With the above observation, the petition dated 30-11-2022 filed by the I.O. of this case is disposed of.

To date (07-01-2023) for production of the accused person, prosecution evidence and I.O report.

Let CD be returned to the I.O.

Let the copy of this order be sent to 1. Superintendent Cum Vice President of Bankura Sammilani Medical College and Hospital for necessary action, 2. Superintendent, Bankura District Correctional Home for necessary action, 3. CWC Bankura for necessary action and 4. I.O. of this case for necessary action.

Dictated and corrected
by me

Judge, Special Court
Khatra, Dist.- Bankura
(Under POCSO Act)

(J.O. code WB01399)
Judge, Special Court
Khatra, Dist.- Bankura.
(Under POCSO Act)