

01/03.04.17

Today fixed for consideration of charge.

Accused Gopal Prasad is on High Court bail and present by filing hazira.

Ld. Spl. P.P is present. Ld. Defence Counsel is present.

At the time of hearing of charge, Ld. Advocate of the accused filed a petition u/s 227 Cr.P.C and submitted that the Ld. Advocate of the accused that accused has not committed the offence of rape and attempt to murder by dangerous weapon but someone else has committed the offence hence he should be discharged. It is further argued that there is no sufficient material to frame charge against the accused.

On the other hand the Ld. Spl. PP of the State has submitted that the statement of the defacto complainant u/s 161 Cr.P.C, complaint dated 07/08/16 clearly show that the offence has been committed by the present accused person. It is further submitted that the VG has given birth of a child and blood sample of the child and accused has been sent for DNA analysis and unless the report comes, it cannot be said that the accused has not committed offence. He has further submitted that for the purpose of framing charge conducting of mini trial is not required only prima facie case against the accused is to be seen.

Vide order dated 07/12/16 this court has allowed the petition of IO for conducting DNA test as the accused has been denying the paternity of the child and the IO has already taken step and the DNA test report has not yet received.

It is pertinent to mention here that in this case DNA test is pre-dominantly important and it is worthy to mention the leading decision herein.

This court being court of original jurisdiction and being special court of POCSO is empowered to monitor the investigation and to give direction to the IO for conducting further investigation.

It is pertinent to mention here the settled proposition of law herein.

In the case of *Sudhir Bhaskar Rao Tambe Vs Hemant Yashwant Dange* reported in **(2016) 6 SCC 277**, relying on the decision of *Sakiri Vasu Vs State of U.P* reported in **(2008) to SCC 409**, Hon'ble Supreme Court has held that the court has not only monitoring power over the investigation but also has power to ensure proper investigation.

In the case of *Thogorani @ K. Dayanti Vs State of Orissa* reported in **2004 Cr.L.J 4003 (Ori)(DB)**, the Hon'ble High Court has held as "the DNA Evidence is now a predominant forensic technique for identifying criminals when biological tissues are left at the scene of crime. DNA testing on samples such as saliva, skin, blood, hair or semen not only helps to convict but also

serves to exonerate. The court has wider power for the purpose doing justice in criminal cases by issuing a direction to the police officer to collect blood sample from accused and conduct DNA test for the purpose of further investigation u/s 173(8) Cr.P.C. The only restriction for issuing a direction to collect the blood sample of the accused for conducting DNA test, the court should balance the public interest vis a vis the rights of accused under article 20(3) and article 21 of Constitution of India in obtaining evidence tending to confirm or disprove that the accused committed offence concerned”.

The Hon'ble High Court laid down following rules :

1. The extent to which the accused may have participated in the commission of crime.
2. The gravity of the offence and the circumstances in which it is committed.
3. Age, physical and mental health of the accused.
4. Whether there is less intrusive and practical way of collecting evidence tending to confirm or disprove the involvement of the accused in the crime.

In the case of *Geetha Vs State of Kerala* reported in **2005 Cr.L.J 2780(Ker)**, the Hon'ble High Court has held that DNA finger printing has risen like a new star in the horizon of law. Let us catch its shine before it is too late and be ready for tomorrow. The Hon'ble High Court further held that let necessary inclusion be made into the statute for a worthy cause.

In the case of *Raja Burman @ Rahu Vs State of M.P* reported in **2016 (3) RCR(Cri) 155 (M.P): 2016 Law Suit (M.P) 322**, the Hon'ble High Court has held “that it has been seen that in number of cases relating to rape, the most powerful investigative tool which is available to the police is the DNA test which is seldom being resorted to. The DNA report can either confirm or exclude the involvement of the accused. The police is directed that in every case u/s 376 of IPC:-

(a) under which the doctor preparing the MLC of the prosecutrix prepares vaginal slides and clothing of the prosecutrix, which upon test by the FSL confirms the presence of the human sperm then such slides must then be sent for DNA verification with the blood sample of the suspect.

(b) where the prosecutrix is rendered pregnant on account of the rape and if birth takes place, then a DNA verification be sought to ascertain of the child which will again either confirm or exclude the suspect. If the foetus is aborted, then the tissue sample of the foetus be tested alongwith the sample of the suspect to see if they match, and

(c) in the event of the death of the prosecutrix during pregnancy, then also procedure enunciated in (b) to be followed”.

In this case the VG was not only raped by accused, but also impregnated her and VG gave birth female child later and accused also tried to murder her by cutting throat.

In view of the above petition filed by the accused u/s 227 is heard, considered and rejected. Perused the case diary and materials on record. Prima facie charge u/s 326/307/376 IPC and u/s 6 of POCSO Act is made out against accused Gopal Prasad.

Formal charge so framed was read over and explained to accd person in Bengali and he was asked whether he will plead guilty or not to which he abjured his guilt by saying “nirdosh” and claimed for trial.

Fixing 02-05-17 for evidence of CSW-1 & CSW-9.

Fixing 03-05-17 for evidence of CSW-2 & CSW-3.

Fixing 04-05-17 for evidence of CSW-4 & CSW-5.

Fixing 05-05-17 for evidence of CSW-6 & CSW-7.

Fixing 06-05-17 for evidence of CSW-8 & CSW-10.

Fixing 08-05-17 for evidence of CSW-11 & CSW-12.

Fixing 10-05-17 for evidence of CSW-13 & CSW-14.

Fixing 11-05-17 for evidence of CSW-16.

Summons be issued accordingly. Prosecution is directed to produce witnesses on the date fixed.

I.O. is specifically directed to be present on the date of trial and to produce the case alamats.

Copy of the order be sent to the I.O. through proper authority.

After disposing of the petition filed u/s 227 Cr.P.C and after framing the charge u/s 228 Cr.P.C, at this stage one petition is moved by the Ld. Advocate of the accused for moving Hon'ble High Court for challenging the order passed by this court and for obtaining certified copy of the order.

Accused has every right to move Hon'ble High Court and has every right to challenge the order passed by this court. There is no requirement of filing such petition. The accused is at liberty to obtain certified copy of the order and challenge the same before Hon'ble High Court.

The petition is misconceived, misdirected and untenable in the eyes of law. Same is heard, considered and rejected.

Hence, the petition is rejected.

Dictated & corrected
by me

Additional District & Sessions judge,
2nd court, Raiganj,

Additional District & Sessions judge,
2nd court, Raiganj, U/D