

THE HON'BLE SRI JUSTICE K.LAKSHMAN
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO
I.A.NO.4 OF 2025 IN I.A.No.1 of 2025
IN
CRIMINAL APPEAL.NO.305 OF 2025

ORDER: (per Justice B.R.Madhusudhan Rao)

1. The present application is filed by the petitioner-A1 under Section 432(1)(2) r/w Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') with a prayer to pass further directions as are deemed appropriate to facilitate-complete the second DNA Test pursuant to the orders dated 27.06.2025 in IA.No.1 of 2025 in Criminal Appeal No.305 of 2025 passed by this Court.

2.1. It is stated in the application that the interlocutory application is filed in connection with the order dated 25.07.2025 passed by the learned II Additional Chief Metropolitan Magistrate, Hyderabad in CrI.M.P.No.1125 of 2025 pursuant to the directions of this Court *vide* order dated 27.06.2025 in IA.No.1 of 2025 in CrI.A.No.305 of 2025 where under the prayer for second DNA test was allowed. Second DNA test is to be conducted at the Centre for DNA Finger Printing and Diagnostics, Uppal, Hyderabad where the petitioner-appellant was supposed to be produced by the Police for

giving his fresh blood sample to be correlated with the first DNA report along with Electropherogram available in connection with files (DNA/400/2021 and DNA 414/2021) pertaining to Crime No.239 of 2021 of PS, Sultanbazar. Despite praying for appropriate directions *vide* prayers A & B in CrI.M.P.No.1125 of 2025, the learned II Additional Chief Metropolitan Magistrate granted only prayer 'B' which is to the effect that the petitioner-appellant should be produced before the Medical Officer of CDFD for collecting Blood Samples and declined prayer 'A' to direct the police to collect DNA Data/Files and organize to transfer the same from TSFSL to CDFD for correlating fresh blood samples taken from the petitioner-appellant for conducting second DNA test.

2.2. Pursuant to the directions of the learned II Additional Chief Metropolitan Magistrate, the police, Sultanbazar produced the petitioner-appellant before the Medical Officer, CDFD on 29.07.2025 and fresh blood sample was collected from him and the petitioner's son paid the requisite fees of Rs.11,682/- through Online to CDFD towards charges for the said test. As the prayer 'A' in CrI.M.P.No.1125 of 2025 is declined, the petitioner-appellant is moving the present interlocutory application praying the Court to pass such further directions as the Court may deem fit and proper to complete the second DNA test, in the interest of justice.

3. The above said application came to be filed on 07.08.2025.

4.1. Mother of the victim by name Ms.Sudham Ramya (complainant and PW.1) filed an application before this Court to implead her as proposed respondent No.2 in Criminal Appeal No.305 of 2025 and to contest the Appeal for the ends of justice or else victim girl shall be gravely prejudiced. The above said application came to be allowed on 15.09.2025 and she is impleaded as respondent No.2 in Criminal Appeal No.305 of 2025.

4.2. Respondent No.2-Ms.Sudham Ramya filed her affidavit-counter and contended that DNA is crucial comparable evidence in cases of sexual violence if collected and profiled properly. As per Section 184 of BNSS, it is necessary to collect DNA evidence in all cases of sexual violence. Samples once collected have to be sent to the DNA laboratory immediately. If this is not possible, then the products of conception should be stored in a container maintaining the cold chain/cold storage (at 4°C) and should be sent to the DNA laboratory as early as possible. First DNA test cannot be treated as doubtful or set aside merely based on bald and vague allegations made by the petitioner-appellant-accused because the result of first DNA test is favouring the victim. If the first limb of the prayer of the petitioner-appellant in Crl.M.P.No.1125 of 2025 is allowed at

the beginning itself, then the possibility of malpractice, wrong doing, biasness, ill will and malafide intention cannot be ruled out.

4.3. The blood sample of the petitioner-appellant was collected on 29.07.2025, the same cannot be now sent for DNA Profile Test as it violates the mandatory guidelines of 48 hours, hence taking into account the delay of almost two months, the prayer for second DNA test is liable to be dismissed. The prayer in the application is to collect the data, electropherogram available in the official computer/record in file No.DNA/400/2021 and 414/2021 from the custody of the TSFSL, Hyderabad and transmit/deliver the said file to the concerned Officer, Centre for DNA Finger Printing and Diagnostics (CDFD), Uppal, Hyderabad. If the said prayer is allowed prior to subjecting the blood sample to DNA Profile Test, then it will give the scope of manipulating the ultimate result in favour of the petitioner-appellant by adopting malpractice.

5. Mother of the victim (Sudham Ramya) preferred an application before the Hon'ble Supreme Court Legal Services Authority *vide* Application Receipt No.6129 of 2025 challenging the order dated 27.06.2025 passed in IA.No.1 of 2025 in Criminal Appeal No.305 of 2025 for allowing second DNA test of the petitioner-appellant, any outcome in IA.No.4 of 2025 pending

before this Court shall be the subject to the outcome of her application before the Hon'ble Supreme Court.

6. Heard learned counsel for the petitioner-appellant, learned Additional Public Prosecutor and counsel for respondent No.2, perused the material.

7. Now the point for consideration is: whether the petitioner is entitled for a direction from this Court to facilitate and complete the second DNA test pursuant to the orders dated 27.06.2025 in IA.No.1 of 2025 in Criminal Appeal No.305 of 2025.

8. 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-accused No.1 was found guilty of the offence under Section 5 r/w Section 6 of the protection of Children from Sexual Offences Act, 2012 (for short '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 offence under Section 5 r/w 6 of POCSO Act and under Section 376(3) and 506 of the Indian penal Code, 1860 (for short 'IPC') and was sentenced to Rigorous Imprisonment for 20 years and 2 years respectively.

9.1. It is observed by the learned Trial Court in a judgment dated 30.12.2024 that DNA report-Ex.P15 is disclosing that A1 is the biological father of fetus.

9.2. Petitioner has filed IA.No.1 of 2025 in Criminal Appeal No.305 of 2025 seeking permission for second DNA test by offering fresh blood samples and for comparing the same with the samples earlier drawn and preserved by the prosecution to prove his innocence.

10. Admittedly, no notice is given to defacto complainant-PW.1-Sudham Ramya in the said application (i.e., IA.No.1 of 2025 in Criminal Appeal No.305 of 2025).

11. Learned Public Prosecutor in IA.No.1of 2025 submitted that the prosecution would not be prejudiced by a second DNA test and the petitioner failed to raise any objection against the DNA report before the trial Court or taken any steps for reanalyzing the same.

12. This Court *vide* order in IA.No.1 of 2025 dated 27.06.2025 allowed the application and the operative portion is as under:

“21. 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”.

13. In pursuance of the orders passed by this Court in IA.No.1 of 2025 in Crl.A.No.305 of 2025 dated 27.06.2025, petitioner-appellant has filed petition before the II Additional Chief Judicial Magistrate at Hyderabad *vide* Crl.M.P.No.1125 of 2025 and the prayer made in the application is as under:

A) direct the Superintendent, Central Prison, Chanchalguda, Hyderabad to collect the data/Electropherogram available in the official computer/records in file No.DNA/400/2021 and 414/2021 from the custody of the Director, Telangana State Forensic Science Laboratories, Hyderabad, (TSFSL), Transmit/deliver the said file No.DNA/400/2021 and 414/2021 from the custody of the Director, Telangana State Forensic Science Laboratories, Hyderabad (TSFSL) to the concerned Officer at the Centre for DNA Fingerprinting and Diagnostics (CDFD), Inner Ring Road, Opp: Metro Rail Pillar

No.NUP-9, Survey Colony, Industrial Development Area, Uppal, Hyderabad;

B) To direct the Superintendent, Central Prison, Chanchalguda, Hyderabad to take the petitioner/appellant/A-1, where he is undergoing life imprisonment to the Concerned Medical Officer at DNA Fingerprinting and Diagnostics. (CDFD), Inner Ring Road, Opp: Metro Rail Pillar No.NUP- 9, Survey Colony, Industrial Development Area, Uppal, Hyderabad so as to enable him to give his fresh blood sample (s) to be co-related with the Electropherogram/DNA data obtained from the custody of the Director, Telangana State Forensic Science Laboratories, Hyderabad vide file No.DNA/400/2021 and 414/2021 and

C) direct the concerned Medical Officer at DNA Fingerprinting and Diagnostics (CDFD), Inner Ring Road, Opp: Metro Rail Pillar No.NUP-9, Survey Colony, Industrial Development Area, Uppal, Hyderabad to conduct the DNA test and furnish the report in a sealed cover to this Hon'ble Court as early as possible for enabling this Hon'ble Court to in turn transmit the same to the Hon'ble High court well within time of eight (8) weeks as fixed by the Hon'ble High Court to complete the entire task, in the interest of justice.

14. The learned II Additional Chief Judicial Magistrate at Hyderabad has partly allowed CrI.M.P.No.1125 of 2025 on 25.07.2025 and the order reads as under:

“1. Heard and Perused the Contents of the Petition filed U/Sec. 432(1)(2) of BNSS and also Order of the Honble High Court in I.A.No.1 of 2025 in CrI.Apl.No.305 of 2025 Dt. 27-06-2025, wherein Honble High Court was pleased to direct the Petitioner/Appellant/A.No.1 to approach Judicial Magistrate

for appropriate directions on the Medical Office for drawing fresh samples for Conducting the Secondary DNA test by Center for DNA Finger Printing and Diagnostics CDFD, Uppal, Hyderabad and as such the petition is Partly allowed strictly in accordance to the above direction of Honble High Court.

The office is directed to address letter to Superintendent of Central Prison, Chanchalguda to produce the accused No.1 undergoing Life Imprisonment before Medical Officer of CDFD, Uppal, Hyderabad for Collecting Blood Samples and to Conduct DNA Test on or before 02-08-2025.

15. As the petition filed by the petitioner-appellant in Crl.M.P.No.1125 of 2025 was partly allowed by the II Additional Chief Judicial Magistrate at Hyderabad, the present application came to be filed by the petitioner to pass further directions.

16. The learned counsel for respondent No.2 placed reliance on the decision of the Hon'ble Supreme Court in Kattavellai @ Devakar Vs. State of Tamil Nadu in Criminal Appeal No.1672 of 2019 (3 Judge Bench), certain directions were issued with regard to DNA at Para No.43 and 44 which reads as under:

“43. A perusal of the various documents released by a number of bodies such as the Standard Operating Procedure for Crime Scene Investigation issued by the Directorate of Forensic Science Service, Ministry of Home Affairs and Government of India, http://164.100.117.138/pdfs/crime%20scene%20manual%20full_organized.pdf; Guidelines for collection, storage and transportation of Crime Scene DNA samples issued by the Central Forensic Science Laboratory, Directorate

of Forensic Science Service, Ministry of Home Affairs and Government of India, https://www.efslchandigarh.gov.in/Uplads/Media/Original/20180627121024_IO-SOP%20Final.pdf; a Forensic Guide for Crime Investigators (Standard Operating Procedures) issued by LNIN National Institute of Criminology and Forensic Science, Ministry of Home Affairs, Government of India, https://jhpolic.gov.in/sites/default/files/documents-reports/jhpolic_ebook_a_forensic_guide_for_crime_investigators.pdf; show that, although, procedures have been suggested, there is no uniformity nor there is a common procedure which is required to be followed by all investigating authorities. This, obviously, has the potential to have an impact on the cases investigated. When it comes to procedure followed by the police generally, differences therein are understandable keeping in view the difference in society, regional complexities as also other factors given the wide length and breadth of the Country, however, the same yardstick cannot be applied when it comes to sensitive evidence such as DNA for the concerns, causes of its dilution in evidentiary value and requirements for it to be collected and maintained in pristine condition is not subject to the same factors. So, even though 'Police', 'Public Order' are subjects mentioned in List-II of the Seventh Schedule of the Constitution of India that in itself cannot permit differing procedures and sensitivities to such evidence, to rule the roost. The aspects in which we find there to be errors committed regularly are in fact procedural aspects which aid the sanctity of the evidence.

44. This lack of a common procedure to be followed, is concerning. As such, we issue the following directions which shall be followed henceforth, in all cases where DNA Evidence is involved:

1. The collection of DNA samples once made after due care and compliance of all necessary procedure including swift and appropriate packaging including a) FIR number and date; b) Section and the statute involved therein; c) details of I.O., Police station; and d) requisite serial number shall be duly documented. The document recording the collection shall have the signatures and designations of the medical professional present, the investigating officer and independent witnesses. Here only we may clarify that the absence of independent witnesses shall not be taken to be compromising to the collection of such evidence, but the efforts made to join such witnesses and the eventual inability to do so shall be duly put down in record.
2. The Investigating Officer shall be responsible for the transportation of the DNA evidence to the concerned police station or the hospital concerned, as the case may be. He shall also be responsible for ensuring that the samples so taken reach the concerned forensic science laboratory with dispatch and in any case not later than 48 hours from the time of collection. Should any extraneous circumstance present itself and the 48-hours timeline cannot be complied with, the reason for the delay shall be duly recorded in the case diary. Throughout, the requisite efforts be made to preserve the samples as per the requirement corresponding to the nature of the sample taken.
3. In the time that the DNA samples are stored pending trial appeal etc., no package shall be opened, altered or resealed without express authorisation of the Trial Court acting upon a statement of a duly qualified and experienced medical professional to the effect that the same shall not have a negative impact on the sanctity of the evidence and with the Court being assured that such a step is necessary for proper and just outcome of the Investigation/Trial.

4. Right from the point of collection to the logical end, i.e., conviction or acquittal of the accused, a Chain of Custody Register shall be maintained wherein each and every movement of the evidence shall be recorded with counter sign at each end thereof stating also the reason therefor. This Chain of Custody Register shall necessarily be appended as part of the Trial Court record. Failure to maintain the same shall render the I.O. responsible for explaining such lapse.

The Directors General of Police of all the States shall prepare sample forms of the Chain of Custody Register and all other documentation directed above and ensure its dispatch to all districts with necessary instruction as may be required”.

17. The learned counsel for respondent No.2 has placed reliance on a handbook for Medical Officers (Medical Examination of Survivors/Victims of Sexual Offences) by Dr. Jagadeesh Narayanareddy, Professor of Forensic Medicine, Vydehi Institute of Medical Sciences and Research Centre, Bangalore, India under the heading of Collection of Medical Evidence during Examination of Survivor/Victim. It is stated as under:

“Products of conception are collected for doing the DNA profiling and to ascertain whether they match with that of the accused. These have to be sent to the DNA laboratory immediately. If this is not possible, then the products of conception should be stored in a container maintaining the cold chain/cold storage (at 4°C) and should be sent to the DNA laboratory as early as possible”.

18. Admittedly, petitioner-appellant has given his DNA samples before the Medical Officer CDFD on 29.07.2025. Almost 3 months is over and as per the decision of the Hon'ble Apex Court in Kattavellai @ Devakar's case, DNA, evidence/samples so taken reach the concerned Forensic Science Laboratory in any case not later than 48 hours from the time of collection and even the handbook also suggest that the DNA has to be sent to the DNA laboratory immediately.

19. As the respondent No.2-mother of the victim has assailed the order passed by this Court in IA.No.1 of 2025 in criminal Appeal No.305 of 2025 dated 27.06.2025 permitting the petitioner-appellant to go for second DNA test which is at the numbering stage before the Hon'ble Supreme Court, it is not appropriate for us to pass an order in the present application.

20. Passing further directions in IA.No.1 of 2025 will not serve the purpose to the petitioner-appellant in view of the fact that IA.No.1 of 2025 in Criminal Appeal No.305 of 2025 dated 27.06.2025 is challenged before the Hon'ble Supreme Court. We deem it fit to close the present application in view of the above said reasons.

21. Liberty is given to the petitioner-appellant to revive his application after the disposal of the Appeal preferred by respondent

No.2 against the orders in IA.No.1 of 2025 in Criminal Appeal
No.305 of 2025 dated 27.06.2025.

22. With the above said observations, I.A. is disposed of.

K.LAKSHMAN, J

B.R.MADHUSUDHAN RAO, J

23rd October, 2025.
PLV