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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
CRA No. 7213 of 2022**

(DILIP SIKDAR Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Dated : 20-09-2022

Shri Utkarsh Agrawal, learned counsel for the appellant.

Shri D.K. Parouha, learned Government Advocate for the respondent
No.1/State.

Heard on I.A. No. 15646/2022, an application for default bail.

2. Appellant has filed this repeat (2nd) criminal appeal under Section 14-A(1) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against rejection of his bail application by Special Judge SC and ST (POA) Act, Balaghat vide order dated 10.08.2022.

3. Earlier appeal filed by appellant was dismissed as withdrawn vide order dated 14.07.2022.

4. Appellant has been arrested on 23.05.2022 in connection with Crime No.21/2022 registered at Police Station-Mahila Thana, District-Balaghat (M.P.) for offences punishable under Sections 376 of Indian Penal Code and Section 3(1)(w)(i) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Learned counsel for the appellant submitted that appellant is entitled to default bail as Court cannot take cognizance of case as challan is not complete and FSL/DNA examination report has not been filed alongwith the challan. In view of same, appellant is entitled to default bail. Counsel appearing for the appellant relied on Section 173(2)(i), which reads under :

"173. - (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

[(h) whether the report of the medical examination of the woman has been attached where investigation relates to an offence under [Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or Section 376E of the Indian Penal Code (45 of 1860)]."

6. In view of same, Investigating Officer is bound by law to file FSL/DNA report alongwith challan and in absence of same, cognizance cannot be taken. It is further submitted that medical examination, which is mentioned in Section 173(2)(h) of Code of Criminal Procedure Code, 1973 is not defined under Section 2 of Code of Criminal Procedure, but, same is mentioned in Section 53 of Code of Criminal Procedure. Section 53 of Code of Criminal Procedure is quoted hereinunder :

"53. Examination of accused by medical practitioner at the request of police officer. - (1) When a person is arrested on a charge of committing an offence of such a nature and

alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

¹*[Explanation.--In this section and in sections 53A and 54,-*

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) "registered medical practitioner" means a medical practitioner who possesses any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.]"

7. It is submitted that in view of same, since material collected by medical practitioner and sent for FSL/DNA report will fall within Section 53 therefore, FSL/DNA report is required to be filed alongwith the challan and if not filed, accused/appellant is entitled to default bail.

8. Government Advocate appearing for the State opposed the

aforesaid prayer. It is submitted that medical examination of victim of rape is not covered under Section 53 of Code of Criminal Procedure, therefore, applicant is not entitled for grant of default bail.

9. Heard the counsel for the parties.

10. Section 53 of Code of Criminal Procedure is regarding examination of accused by medical practitioner and Section 53 will not cover examination of complainant/victim of crime. Complainant or victim of crime is medically examined under Section 164-A of Code of Criminal Procedure. Section 164-A provides as under :

"164A. Medical examination of the victim of rape - (1) Where, during the stage when an offence of rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of the woman or of some person competent to give such consent on her behalf and the woman shall be forwarded to the registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner to whom such woman is forwarded shall without delay examine her person and prepare a report specifically recording the result of his examination and giving the following particulars, namely :-

(i) the name and address of the woman and of the person by whom she was brought,

(ii) the age of the woman,

(iii) whether the victim was previously used to sexual intercourse,

(iv) marks of injuries, if any, on the person of the woman,

(v) *general mental condition of the woman, and*

(vi) *other material particulars, in reasonable detail.*

(3) *The report shall state precisely the reasons for each conclusion arrived at.*

(4) *The report shall specifically record that the consent of the woman or of some person competent to give such consent on her behalf to such examination had been obtained.*

(5) *The exact time of commencement and completion of the examination shall also be noted in the report.*

(6) *the registered medical practitioner shall without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to In clause (a) of sub-section (5) of that section.*

(7) *Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or of any person competent to give such consent on her behalf."*

11. As per said section, victim of rape is to be medically examined by medical practitioner, which includes description of material taken from person of women for DNA profiling. Said medical examination does not contain FSL report or DNA report. Examination report has to give description of material taken from prosecutrix for DNA profiling. Report will come at subsequent stage and same is not mentioned in Section 164-A(2). Therefore, it is not mandatory for prosecution to file FSL report or DNA report alongwith the challan and can also produced in Court later on. On basis of non filing of said report, appellant is not entitled for grant of default bail.

12. I.A. No. 15646/2022 filed by appellant is hereby dismissed.

13. Government Advocate is directed to call for case diary.

14. List the matter after a week for consideration.

(VISHAL DHAGAT)
JUDGE

vkt

