



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 201037 OF 2025

(482(Cr.PC)/528(BNSS))

BETWEEN:

[REDACTED]

...PETITIONER

(BY SRI ARUNKUMAR AMARGUNDAPPA., ADVOCATE)

AND:

1. [REDACTED]

2. [REDACTED]

...RESPONDENTS

THIS CRL.P IS FILED U/S.482 OF CR.P.C. (OLD), U/SEC. 528 OF BNSS (NEW), PRAYING TO ALLOW THIS PETITION AND





SET ASIDE THE IMPUGNED ORDER DATED 21.05.2025 PASSED ON IA NO.III IN PENDING CRL.MISC.NO.227/2024 BY THE PRL. JUDGE FAMILY COURT RAICHUR CONSEQUENTLY ALLOW THE APPLICATION I.A.NO.III FILED BY THE PETITIONER DATED 30.09.2023 AND TO PASS ANY OTHER APPROPRIATE ORDERS AS DEEM FIT IN THE CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

This petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking to set aside the order dated 21.05.2025 passed on I.A.No.III in Crl.Misc.No.227/2024 on the file of Prl. Judge, Family Court, Raichur.

2. The factual matrix of the case is that, petitioner is the husband of respondent No.1 and their marriage was solemnized on 25.05.2022 and out of the wedlock, they begotten a child, namely, [REDACTED], now aged about 1 year. Subsequently, due to the matrimonial dispute, a petition was filed by respondent No.1-wife under Section 125 of Cr.P.C. for grant of maintenance. In the said case,



after entering the appearance of respondent i.e., petitioner herein, filed the application-I.A.No.III under Sections 39 and 116 of BSA, 2023 r/w Section 12 of Family Courts Act, to conduct DNA test of the child. Hence, this petition.

3. It is the contention of the learned counsel for the petitioner that, though the petitioner has not denied the marital status, however, child-XXXXXXXXXX was not born to the petitioner. The petitioner and respondent No.2 were lived together for few days and there was no continuous cohabitation between them. As such, he suspected the paternity of the child. Hence, he filed I.A.No.III before the Family Court, however, the same was rejected without considering the same in right perspective. Hence, prays to allow the petition.

4. I have given my anxious consideration on the submissions made by the learned counsel for the petitioner and perused I.A.No.III filed before the Family Court and the affidavit accompanying the application.



5. As could be gathered from records, the petitioner has not disputed the marital status with respondent No.2. It is an admitted case of the petitioner that they both married on 25.05.2022 and they lived together for few days and during their stay, they both were cohabiting. The contention of the petitioner is that, he was not in continuous cohabitation with respondent No.2, as such, he doubted the paternity of the child.

6. The Family Court while rejecting the application has opined that, since the petitioner and respondent No.2 were stayed for a period of one week and were in cohabitation, the paternity of the child cannot be doubted. The application is filed in a preconceived notion in order to escape from paying maintenance to respondent No.2. No doubt, in the proceedings under Section 125 of Cr.P.C., if the husband disputes the marital relationship or the paternity of the child, the Court is empowered to direct DNA test to ascertain the truth of such assertions.



7. The Hon'ble Apex Court in the case of **Goutam Kundu v. State of W.B.**, reported in **(1993) 3 SCC 418**, held in paragraph Nos.24 and 16 as under:

"24. *This section requires the party disputing the paternity to prove non-access in order to dispel the presumption. "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual "cohabitation".*

26. *From the above discussion it emerges—*

(1) That courts in India cannot order blood test as a matter of course;

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) there must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) the court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of



branding a child as a bastard and the mother as an unchaste woman.

(5) no one can be compelled to give sample of blood for analysis.

8. DNA test in a matter relating to paternity of a child should not be directed by the Court as a matter of course or in a routine manner, whenever such a request is made. The Court has to consider diverse aspects including presumption under Section 112 of the Evidence Act i.e., Section 116 of Bharatiya Sakshya Adhiniyam, 2023; pros and cons of such order and the test of "eminent need" whether it is not possible for the Court to reach the truth without use of such test.

9. In the instant case, admittedly the petitioner has not disputed the marital status and also the cohabitation with respondent No.2 for few days. In such circumstance, in my considered view, the paternity cannot be questioned. Hence, I am of the opinion that the Family Court has rightly passed the impugned order, which does



not call for any interference. Accordingly, the petition lacks merit and the same is ***dismissed***.

Sd/-
(RAJESH RAI K)
JUDGE

SDU
LIST NO.: 1 SL NO.: 10
Ct;rj