

05.10.2026
Sl. No.1
Ct. No.237
S.A.

CRR 779 of 2026
Nargish Bano @ Nargis Bano
- vs -
The State of West Bengal & Ors.

Mr. Satadru Lahiri
Mr. Safdar Azam

...for the petitioner

Mr. Somesh Panja
Ms. Moutusi Hazra
Ms. Puja Kurmi

...for respondent nos.2 & 3

Mr. Kallol Mondal
Mr. Subir Ganguly

...for the State

The issue involved in the present case is more humane and sensitive than criminal in nature, as it concerns the biological identity and welfare of two young children. The Court was faced with the delicate question of whether the pursuit of biological truth should prevail over the privacy and the possible emotional consequences of such examination. Having considered the competing interests, this Court has chosen the course which, in its considered view, is most likely to ascertain the truth while protecting the welfare and dignity of the children.

The present Criminal Revisional Application has been preferred by the petitioner, Nargis @ Nargish Bano, challenging the order dated 11th August, 2025, passed by the learned Additional Chief Judicial Magistrate, Durgapur, in G.R. Case No. 1510 of 2023, arising out of Durgapur Police Station Case No. 420 dated 22nd August, 2023.

By the impugned order, the learned Magistrate rejected the prayer of the Investigating Agency for conducting DNA profiling of Opposite Party Nos. 2 and 3 and the minor child in their custody,

principally on the ground that the concerned persons had not consented to such examination.

The case arises out of a complaint filed by the petitioner alleging the exchange or swapping of newborn babies at Health World City Centre, Durgapur. The petitioner alleges that she gave birth to a female child on 10th July, 2023. However, on 12th July, 2023, she noticed that the identification tag attached to the child did not correspond with her name and, instead, mentioned “B/O Baishakhi Guin”, being the name of Opposite Party No. 2, who had also delivered a female child on the same date. The concerned nurse was informed and immediately changed the tag, stating that it had been affixed by mistake. There was also a material discrepancy in the blood-group entries relating to the child. These circumstances gave rise to a genuine and reasonable suspicion in the mind of the petitioner that the babies might have been exchanged.

It was further alleged in the complaint that the petitioner met two officials of the hospital, namely, Prabir Mukherjee and Bablu Mukherjee. Instead of extending any assistance to her, the said officials allegedly misbehaved with the petitioner and threatened her with dire consequences. The petitioner further alleged that she had strong reason to suspect that the hospital staff, in connivance with Prabir Mukherjee and Bablu Mukherjee, had fraudulently exchanged her baby with that of Opposite Party No. 2.

On the basis of the aforesaid complaint, Durgapur Police Station Case No. 420 of 2023 dated 22nd August, 2023, was

registered under Sections 417/420/406/506/120B/34 of the Indian Penal Code.

The Investigating Agency, on an earlier occasion, had prayed before the learned Magistrate in the Court below for conducting a DNA test of the petitioner and her husband. The said prayer was rejected by the learned Magistrate by an order dated 11th September, 2023.

The petitioner challenged the said order before this Court by filing CRR No. 4350 of 2023. A Coordinate Bench of this Court, by an order passed therein, directed DNA testing of the petitioner, her husband, and the child in their custody.

The DNA report dated 7th March, 2025, however, did not establish the petitioner and her husband as the biological parents of the child presently in their custody.

Mr. Satadru Lahiri, learned advocate appearing for the petitioner, submits that the present case is not a routine matrimonial, paternity, or legitimacy dispute. Without comparative DNA profiling, it would not be possible to ascertain which child belongs to which parents or to identify the victim of the alleged offence.

Mr. Lahiri further submits that the Criminal Procedure (Identification) Act, 2022 expressly recognises biological samples and their analysis as “measurements”. Mr. Lahiri has placed strong reliance upon Section 5 of the said Act of 2022. He submits that, while the scope of Section 3 is restricted, a Magistrate is vested with a wider power under Section 5 to direct any person to give measurements for the purpose of any

investigation or proceeding under the Code of Criminal Procedure, 1973.

Mr. Lahiri submits that the expression “any person” as appearing in Section 5 of the said Act of 2022, is significant and does not restrict the power of the Magistrate only to an accused or an arrested person. It is submitted that consent cannot be treated as a condition precedent for the exercise of jurisdiction under Section 5.

Mr. Lahiri argues that the examination is necessary because no oral evidence can conclusively establish the biological identity of a particular newborn child. DNA profiling, according to learned counsel, is the only reliable and scientifically precise means of determining the biological identity of the children.

According to Mr. Lahiri, the absence of formal addition of offences under Sections 363 or 369 of the Indian Penal Code, corresponding to Sections 137 and 139 of the Bharatiya Nyaya Sanhita, cannot render the prayer for DNA examination premature. Investigation is not confined only to the offences initially mentioned in the First Information Report. In the present case, the precise identity of the child allegedly removed from lawful guardianship can itself be established only through DNA profiling.

In support of his submissions, Mr. Lahiri has relied upon the following judgments:

- Special Leave to Appeal (Criminal) No. 13950/2025, Decided on 19th January, 2026, (*Usha Singh & Anr. v. State of Chhattisgarh & Ors.*)

- (2014) 2 SCC 576 (Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik).
- (2012) 12 SCC 554 (Narayan Dutt Tiwari v. Rohit Shekhar).
- (2013) 2 SCC 357 (Ritesh Sinha v. State of Uttar Pradesh).
- 2026 SCC OnLine SC 994 (Chaturbhuja Pradhan v. Amar Pradhan).
- Writ Petition No. 8894 of 2021, Decided on 19th January, 2023, (Bombay High Court, Prajakta Dnyaneshwar Kadam v. Dnyaneshwar Navnath Kadam).
- Special Leave to Appeal (Civil) No. 5859/2023, Decided on 19th August, 2026 (Prajakta Dnyaneshwar Kadam v. Dnyaneshwar Navnath Kadam).
- (2008) 2 SCC 409 (Sakiri Vasu v. State of Uttar Pradesh).
- (2006) 4 SCC 359 (Minu Kumari v. State of Bihar).
- (2006) 7 SCC 296 (Popular Muthiah v. State, Represented by Inspector of Police).

Learned advocate appearing on behalf of Opposite Party Nos. 2 and 3 submits that Opposite Party Nos. 2 and 3 were not named as accused in the First Information Report. It is submitted that the child is in the custody of Opposite Party Nos. 2 and 3 and is their biological child, as evidenced by the identification marks and the hospital records, including the Bed Head Ticket. It is further submitted that they had no reason to suspect any incident of child swapping until they received notice from the learned Additional Chief Judicial Magistrate, Durgapur, requiring them and their child to undergo DNA testing.

Learned advocate appearing for the opposite parties questions the propriety of the application filed by the

Investigating Officer seeking permission to conduct the DNA test, primarily on the grounds of privacy, the welfare and emotional well-being of the child, and the protection guaranteed under Article 21 of the Constitution.

It is contended that the Investigating Officer sought the DNA test to overcome deficiencies in the investigation, instead of examining the relevant hospital records and other documentary evidence. It is submitted that the hospital's birth records, identification marks, and medical documentation could more appropriately establish the relevant facts.

It is also submitted that compelling a DNA test after the lapse of more than two years would cause serious psychological and emotional consequences for the child and the concerned parties.

Relying upon Article 21 of the Constitution and the decision of the Hon'ble Supreme Court in ***R. Rajendran v. Kamar Nishand & Others, reported at AIR 2025 SC 5605***, it is argued that DNA testing should not ordinarily be directed during the course of an investigation where relevant documentary evidence is available. It is further contended that DNA testing is not conclusive in every circumstance and may, at best, be utilised as corroborative evidence.

The Criminal Procedure (Identification) Act, 2022, defines “measurements” in the following terms:

“2. (1) In this Act, unless the context otherwise requires,—

Definitions.

.....

(b) "measurements" includes finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure, 1973;”

Section 3 of the said Act of 2022 provides as follows:

Taking of measurement.

“3. Any person, who has been,—

(a) convicted of an offence punishable under any law for the time being in force; or

(b) ordered to give security for his good behaviour or maintaining peace under section 117 of the Code of Criminal Procedure, 1973 for a proceeding under section 107 or section 108 or section 109 or section 110 of the said Code; or 2 of 1974

(c) arrested in connection with an offence punishable under any law for the time being in force or detained under any preventive detention law,

shall, if so required, allow his measurement to be taken by a police officer or a prison officer in such manner as may be prescribed by the Central Government or the State Government:

Provided that any person arrested for an offence committed under any law for the time being in force (except for an offence committed against a woman or a child or for any offence punishable with imprisonment for a period not less than seven years) may not be obliged to allow taking of his biological samples under the provisions of this section.”

It is also necessary to take note of Sections 5 and 6 of the said Act of 2022, which read as follows:

2 of 1974. “5. Where the	Power of
Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 or any other law for the time being in force, it is expedient to direct any person to give measurements under this Act, the Magistrate may make an order to that effect and in that case, the person to whom the order relates shall allow the measurements to be taken in conformity with such directions.”	Magistrate to direct a person to give measurements.

45 of 1860 *“6. (1) If any person who is required to allow the measurements to be taken under this Act resists or refuses to allow taking of such measurements, it shall be lawful for the police officer or prison officer to take such measurements in such manner as may be prescribed. Resistance to allow taking of measurements.*

(2) Resistance to or refusal to allow the taking of measurements under this Act shall be deemed to be an offence under section 186 of the Indian Penal Code.”

It is necessary to examine the nature of the allegation forming the basis of the present investigation. The complaint itself indicates that the alleged swapping of the children may have occurred on account of a mistake or administrative mix-up at the hospital. To constitute the offence of kidnapping from lawful guardianship, there must be a positive act of taking or enticing the child away from the keeping of the lawful guardian.

Thus, where the alleged change of custody is purely accidental and results from negligence or an administrative error, without any conscious act of taking or enticing the child, the essential physical element of the offence of kidnapping from lawful guardianship would be absent.

Consequently, Section 3 of the Act of 2022 cannot, on the allegations as they presently stand, be invoked as the statutory basis for compelling Opposite Party Nos. 2 and 3 to provide their

biological samples. The prayer for DNA profiling must, therefore, be examined within the scope and parameters of Section 5 of the said Act.

It must also be borne in mind that the prayer for DNA profiling cannot be rejected merely on the ground that Opposite Party Nos. 2 and 3 have not consented to such examination. Section 6 contemplates the consequences of resistance or refusal to comply with a direction validly issued under Section 5. Thus, consent, by itself, cannot be regarded as an absolute condition precedent to the exercise of jurisdiction under Section 5.

However, it is necessary to observe that an order under Section 5 of the said Act is an enabling power to be exercised upon the Magistrate recording the requisite satisfaction; it is not a power to be exercised as a matter of course. The mere fact that Section 5 uses the expression “any person” and refers broadly to “any investigation or proceeding” does not dispense with the statutory requirement that the Magistrate must independently satisfy himself that obtaining such measurement is expedient in the facts and circumstances of the particular case.

Section 3 may legitimately be taken into consideration as part of the statutory scheme while exercising jurisdiction under Section 5. Where the person sought to be subjected to measurement does not fall within the ordinary categories contemplated under Section 3, the Magistrate must examine with corresponding care whether the facts of the case justify recourse to the wider power under Section 5. In other words, Section 3 provides the statutory context against which the Magistrate is

required to assess whether the exercise of the wider power conferred by Section 5 is warranted.

In the present case, there is already a scientific result excluding the petitioner and her husband as the biological parents of the child presently in their custody, and the allegation is specifically that the two newborn children were interchanged in the hospital.

If the children were, in fact, exchanged at birth, allowing the uncertainty to continue indefinitely may result in two children continuing to grow up with families who are not their biological families, while the truth remains capable of being scientifically established. The question, therefore, is not merely one of determining paternity in a private dispute, but of ascertaining the biological identity of the children in the course of a criminal investigation into an alleged exchange.

In ***Chaturbhuji Pradhan***, the Supreme Court expressly recognised the importance of privacy while also balancing such right against the legitimate interest of a child in obtaining a definitive answer concerning his biological identity. The competing rights and interests must, therefore, be balanced in the facts and circumstances of each individual case.

This Court is conscious of the fact that, by the time the matter has reached this Court, the children are approximately three years and one month old. At this stage of development, children form profound psychological, cognitive, and emotional bonds with the parents who have raised and nurtured them. Any

disruption of such established relationships, therefore, requires careful consideration.

However, a simple dismissal of the present revisional application cannot, in the considered view of this Court, necessarily be regarded as the course most conducive to the best interests of the children. The interest of a child in knowing his or her true biological identity is also a relevant and significant consideration.

At the same time, this Court is of the view that even if the DNA examination confirms that the children were exchanged, such determination would not, by itself, warrants an immediate physical transfer of custody from one family to another.

The Court may, at that stage, require the assistance of a qualified child-welfare specialist or child psychologist to assess the circumstances of the children and to facilitate an appropriate arrangement concerning visitation, interaction, and, if necessary, transition.

The DNA examination, therefore, should not be regarded as the end of the child-welfare inquiry. It would, at best, establish a biological fact which may necessitate further consideration of the welfare, identity, and future care of the children.

In view of the aforesaid facts, this Court considers it appropriate to issue limited directions for the purpose of ascertaining the biological identity of the children.

Accordingly, the following directions are issued:

(i) The petitioner, her husband, and the child presently in their custody shall undergo a repeat DNA examination at the State Forensic Science Laboratory, Government of West Bengal.

(ii) The child presently in the custody of Opposite Party Nos. 2 and 3 shall also undergo DNA examination at the State Forensic Science Laboratory, Government of West Bengal, for the limited purpose of determining the biological relationship between the child and the respective parties concerned.

(iii) Opposite Party Nos. 2 and 3 shall be at liberty to undergo DNA examination at the same laboratory. However, having regard to the fact that they are not arrayed as accused in the present case and in view of the considerations of privacy and bodily autonomy, the Investigating Agency shall not compel them to undergo such examination.

(iv) The DNA examination shall be confined strictly to the purpose for which it is directed by this Court, namely, the determination of the biological relationship between the children and the concerned adults.

(v) The Director, State Forensic Science Laboratory, Government of West Bengal, shall ensure that the collection, preservation, transportation, examination, and analysis of the biological samples are carried out in accordance with the applicable scientific and forensic protocols.

(vi) Having regard to the age of the children and the sensitive nature of the matter, the biological samples of both children shall, as far as practicable, be collected from their respective residences.

(vii) The parties as well as the Investigating Officer of this case shall communicate this order to the Director, State Forensic Science Laboratory, Government of West Bengal, immediately. The Director, State Forensic Science Laboratory, Government of West Bengal, shall make all necessary arrangements to ensure that the aforesaid DNA examinations are completed within ten days from the date of communication of this order.

(viii) The parties shall extend all necessary assistance to the State Forensic Science Laboratory and the Investigating Agency for expeditious compliance with this order. The report shall thereafter be forwarded to the Investigating Officer and placed before this Court on the next date of hearing.

(ix) Nothing contained in this order shall be construed as a direction for transfer or exchange of custody of either of the children on the basis of the DNA result alone.

List this matter on October 15, 2026 under the heading “To Be Mentioned.”

(Kausik Chanda, J.)