2026:AHC:100611

(AFR)
Reserved on 13.03.2026
Delivered on 04.05.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 10028 of 2026

Smt Mansi Tyagi And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Bhaiya Ram
Counsel for Opposite Party(s)	:	Asim Kumar Singh, G.A.

Court No. - 78

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard Mrs. Nikki Verma holding brief of Mr. Bhaiya Ram, learned counsel for the applicants, Mr. Asim Kumar Singh, learned counsel for the opposite party No. 2 and Mr. Nand Lal, learned AGA for the State and perused the record.

2. The present application under Section 528 BNSS has been filed with a prayer to quash the order dated 19.01.2026 passed by learned Additional Principal Judge, Family Court No.1, Agra, in Case No. 994 of 2020 (Mansi Tyagi v. Shri Satish Tiwari) rejecting the application No. 11B dated 20.09.2023 moved by Smt. Mansi Tyagi for the determination of the paternity of her begotten son Master Shiva through DNA test by taking the blood samples of applicant No. 2 Master Shiva and opposite party No. 2, Satish Tiwari in the pending maintenance proceeding under section 125 Cr.P.C.

3. The noticeable facts relevant to deal with the controversy are that the marriage of the applicant, Smt. Mansi Tyagi was solemnized with one Narendra Tyagi in the year 2012 according to Hindu rites and rituals and two sons were born out of their wedlock, namely, Harsh Tyagi and Rohit Tyagi. In the year 2018-19, the applicant Mansi Tyagi came in contact with the opposite party No. 2, Satish Tiwari @ Akhilesh Tiwari and developed extra-marital relationship and a son named Shiva was begotten

on 12.07.2020. The husband Narendra Tyagi noticed the fact and went for the paternity test of himself and the begotten child Master Shiva wherein the DNA Test report dated 28.07.2020 disclosed that husband Narendra Tyagi is not the biological father of the applicant No. 2, Master Shiva and thus moved a divorce petition on 24.08.2020 for dissolution of the marriage.

4. In the meantime, the applicant, Smt. Mansi Tyagi, moved an application dated 05.10.2020 under Section 125 Cr.P.C., i.e., Petition No. 994 of 2020 (Smt. Mansi Tyagi and another v. Satish Tiwari @ Akhilesh Kumar Tiwari) before the Principal Judge, Family Court, Agra claiming maintenance on behalf of the minor begotten son i.e., applicant No. 2 Master Shiva, from the opposite party No. 2, Satish Tiwari @ Akhilesh Kumar Tiwari.

5. During the pendency of the Maintenance Petition, the applicant No. 1 Mansi Tyagi moved an application No. 11B dated 20.09.2023 for the scientific determination of the paternity wherein the impugned order dated 19.01.2026 has been passed by learned Additional Principal Judge, Family Court No.1 rejecting the same on the ground that there is no material in regard to live-in-relationship between the applicant no. 1 and opposite party no.2, hence, the present petition.

6. In this backdrop, it is relevant to mention that admittedly the applicant No.1, Mansi Tyagi is the legally wedded wife of Narendra Tyagi and during the subsistence of the valid marriage, she developed an extra marital relationship with the opposite party No. 2, Satish Tiwari @ Akhilesh Tiwari who fathered the child i.e., the applicant No. 2, Master Shiva.

7. The birth of applicant No. 2, Master Shiva, during the subsistence of valid marriage between the couple is the conclusive proof of legitimacy. However, at the subsequent stage, the husband Narendra Tyagi separated himself from applicant No. 1 after obtaining the DNA Test Report dated 28.07.2020 which disclosed that Narendra Tyagi was not the biological father of applicant No. 2, Master Shiva and thus moved a divorce petition on 24.08.2020 bearing Petition No. 1094 of 2020 (Narendra Tyagi v.

Mansi Tyagi) before the Court of Principal Judge, Family Court, Agra which is still pending decision.

8. Recently, the Hon'ble Apex Court in **Ivan Rathinam v. Milan Joseph, 2025 INSC 115** has discussed in detail on the issues relating to paternity, legitimacy and maintenance of a child begotten from an extra marital relationship. At this juncture, it is relevant to refer the legal position which exists in India. The relevant paragraphs are referred here-in-below:

"26. The advent of scientific testing has made it much easier to prove that a child is not a particular person's offspring. *To this end,* ***Indian courts have sanctioned the use of DNA testing, but sparingly.***

27. Before delving into the analysis, it is pertinent to elucidate Section 112 of the Indian Evidence Act, 1872:

"112. Birth during marriage, conclusive proof of legitimacy. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

28. The language of the provision makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity. The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts 'illegitimacy' to prove it only through 'non-access.'

29. *It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations. To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations. Non-access means the impossibility, not merely inability, of the spouses to have marital relations with each other. For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence*. (emphasis supplied)

30. It is only when such an assertion is made, that the court can consider the question of ordering a DNA test to establish paternity. In **Goutam Kundu v. State of W.B.; 1993 (3) SCC 418**, this Court laid down the following parameters to decide whether a court can order a DNA test for the purposes of Section 112 of the Indian Evidence Act.

"(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."

31. These parameters have been subsequently followed by this Court in **Sharda v. Dharmpal; (2003) 4 SCC 493 and Bhabani Prasad Jena v. Orissa State Commission for Women; (2010) 8 SCC 633**. In these cases, it was held that DNA tests may be ordered, only if a strong prima facie case of non-access is made out, with sufficient material placed before the court to arrive at a decision.

9. At this juncture, one must not ignore the observations made by the Hon'ble Apex Court in **Aparna Ajinkya Firodia v. Ajinkya Arun Firodia**; **(2024) 7 SCC 773** that : ***"under the Indian legal spectrum, a husband, is strongly presumed to be the father of a child borne to his wife. It has been held that there is a strong presumption regarding the paternity of a child. This presumption can be overcome only by evidence precluding any pro-creative role of the husband such as by showing that the husband and wife had no access to the each other at the time of possible conception. Therefore, in the absence of proof of non-access the law considers that husband's paternity to be conclusively established if they cohabited when the child is likely to have been conceived. The presumption protects social parentage over biological parentage.***

10. ***Further, it has been observed that if husband and wife were living together during the time of conception but the DNA test reveals that the child was not borne to the husband, the conclusiveness of the presumption of legitimacy of such child in law would remain irrebuttable. In such situation, adultery may be proved on the part of the wife, the legitimacy of the child, would still be conclusive in law. The conclusive presumption of legitimacy of a child borne during the subsistence of a valid marriage is that the child is that of the husband and it cannot be rebutted by a mere DNA test report. For rebuttal, there***

***must be the proof of non-access at the time when the child could have been begotten, i.e,, at the time of its conception.*"**

11. However, as to the stage of conducting DNA test and the consideration which are required to be taken into account before forming such option, the observations made by the Apex Court in the Case of **Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commissioner for Women and another reported in MANU/SC/0555/2010: 2010 (8) Supreme Court Cases 633** *are relevant to be taken note of. In that case, the Apex Court had held that DNA test in a matter relating to paternity of a child should not be directed by the Court as a matter of course or routine manner. Wherever such request is made, the Evidence Act; 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. Any order or direction for DNA test can be given by the Court only when a strong prima facie case is made out for such a course. Since the presumption is in favour of the legitimacy, the burden to prove it only through "non-access" is cast upon the person who asserts "illegitimacy" as discussed above.*

12. *Forcefully undergoing a DNA test would subject an individual's private life to scrutiny from the outside world. That scrutiny, particularly when, concerning matters of infidelity, can be harsh and can eviscerate a person's reputation and standing in society.*

13. In the case at hand, it is an admitted fact that applicant no. 2 was begotten on 12.07.2020 during the subsistence of the valid marriage of Mansi Tyagi and Narendra Tyagi who remained together until the husband separated himself after procurement of DNA Test Report dated 28.07.2020 and filing of the divorce petition under section 13 of Hindu Marriage Act dated 24.08.2020 which is still pending decision. It is obvious that both had access throughout their marriage. Even if it is presumed that Applicant No.1 developed extra marital relationship with opposite party no.2 especially when the Applicant No.2 was begotten, such a fact, *per se*, would not be sufficient to displace the presumption of legitimacy. It seems that the husband and opposite party no. 2 both had simultaneous access. There being a statutory mandate, the applicant No.

2, Master Shiva shall be presumed to be the son of Narendra Tyagi.

14. Most recently, the Supreme Court has reiterated in **R. Rajendran vs. Kamar Nisha, 2025 INSC 1304** *"that the law favours legitimacy and frowns upon the illegitimacy" and that section 112 of the Indian Evidence Act "stands as a bulwark against the casual illegitimization of children on the strength of unsubstantiated allegations or mere suspicion."*

15. In the light of the legal position, as discussed above, there is no 'eminent need' for a DNA Profiling test of opposite party No. 2. The learned Family Court has rightly rejected the application No. 11B for the determination of paternity.

16. No interference is required.

17. The present application is accordingly, ***dismissed***.

(Nand Prabha Shukla,J.)

May 4, 2026
Aditya Tripathi