

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.MMO No.1206 of 2025**

**Date of Decision: 16.04.2026**

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Rajmal .....Petitioner

Versus

State of Himachal Pradesh ... Respondent

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Coram:

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

Whether approved for reporting? <sup>1</sup> Yes.

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**For the Petitioner** : Mr. Yadvender Gupta, Advocate.

**For the Respondents:** Mr. Rajan Kahol & Mr. Vishal Panwar,  
Additional Advocate Generals with Mr. Ravi  
Chauhan & Mr. Anish Banshtu, Deputy  
Advocates General.

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**Sandeep Sharma, Judge**(oral):

By way of instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, challenge has been laid to order dated 11.07.2024 passed by learned Special Judge, Mandi, District Mandi, Himachal Pradesh, whereby an application filed by the petitioner-accused(hereinafter 'accused') for re-testing of contraband came to be rejected.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties are that on 27.01.2024, on the basis of secret information, police intercepted vehicle bearing registration No. HP-76-

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<sup>1</sup>Whether the reporters of the local papers may be allowed to see the judgment?

2450 for checking and allegedly recovered 288 grams of chitta/heroin in the presence of independent witnesses. Since petitioner herein was one of the occupant of the car, he also came to be named in the FIR No.22 of 2024, dated 29.01.2024, registered at police Station Sadar, District Mandi, Himachal Pradesh under Sections 21 and 29 of the NDPS Act. Petitioner herein, who is in judicial custody, filed an application under Section 528 of Bharatiya Nagarik Suraksha Sanhita for re-testing of contraband. However, such prayer of him came to be rejected vide order dated 11.07.2024 (**Annexure P-2**) passed by learned Special Judge, Mandi, Himachal Pradesh. In the afore background, petitioner-accused has approached this Court in the instant proceedings, praying therein to set aside aforesaid order and allow the aforesaid application for re-testing of contraband.

3. In nutshell, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Yadvender Gupta, learned counsel for the petitioner, is that learned Court below, while passing the impugned order, has fallen in grave error inasmuch as ignoring the exceptional circumstance indicated in the application for re-testing. Mr. Gupta, submitted that since petitioner specifically alleged that he has been falsely implicated and contraband allegedly recovered in the case at hand is not the chitta/heroin, no prejudice, if any, would have been caused to either of the parties in case prayer made on behalf of the petitioner for re-testing was allowed, rather

petitioner-accused, who has been falsely implicated, would have got fair chance to prove his innocence.

4. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, while supporting the impugned order, vehemently argued that by now it is well settled that in normal circumstances re-testing is not permitted. He submitted that even in exceptional circumstances, prayer, if any, for re-testing can be made within a period of 15 days from the date of receipt of report of chemical analysis. He submitted that though in the instant case, petitioner has been not able to point out any exceptional circumstance, but even otherwise application for re-testing was filed after 113 days from the date of receipt of chemical analysis. While referring to the judgment passed by Hon'ble Apex Court in case titled **Thana Singh vs. Central Bureau of Narcotics, (2013) 2 Supreme Court Cases 590**, learned Additional Advocate General strenuously argued that any requests as to re-testing/re-sampling shall not be entertained under the NDPS Act as a matter of course, rather same can be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. He submitted that since an application in such rare cases are to be filed within a period of fifteen days of the receipt of the test report, application, having been filed by the petitioner after delay 113 days from the date of receipt of report of chemical analysis, rightly came to be rejected. He also submitted that prior to filing of the

petition at hand, petitioner had filed similar petition i.e. Cr.MMO No.948 of 2024 before this Court, but same was withdrawn without any cogent and convincing reason.

5. I have heard learned counsel for the parties and gone through the record carefully.

6. Since factual matrix of the case, as has been discussed hereinabove, is not in dispute, this Court need not to elaborate upon the same.

7. Precisely, the question, which needs to be determined in the case at hand, is “whether prayer, if any, made for re-testing of contraband recovered in the cases registered under NDPS Act can be accepted, if yes, such prayer can be made at what stage and within what time period”. Aforesaid issue is no more res-integra, rather stands settled with the passing of the judgment by Hon'ble Apex Court in ***Thana Singh case*** (supra). In the aforesaid judgment, Hon'ble Apex Court has categorically held that prayer for re-testing of contraband is not to be accepted in routine manner, rather in exceptional circumstances such prayer can be accepted that too on the application made by the accused within a period of 15 days from the date of receipt of chemical report.

8. At this stage, it would be profitable to reproduce paras No. 23 to 27 of the aforesaid judgment herein below:-

“**23.** Further, steps must be taken by the departments concerned to improve the quality and expertise of the technical staff, equipment and testing laboratories.

**24.** The NDPS Act itself does not permit re-sampling or re-testing of samples. Yet, there has been a trend to the contrary; NDPS Courts have been consistently obliging to applications for re-testing and re-sampling. These applications add to delays as they are often received at advanced stages of trials after significant elapse of time. NDPS Courts seem to be permitting re-testing nonetheless by taking resort to either some High Court judgments [see *State of Kerala v. Deepak P. Shah* [2001 Cri LJ 2690 (Ker)] and *Nihal Khan v. State (Govt. of NCT of Delhi)* [2007 Cri LJ 2074 (Del)] ] or perhaps to Sections 79 and 80 of the NDPS Act which permit application of the Customs Act, 1962 and the Drugs and Cosmetics Act, 1940. While re-testing may be an important right of an accused, the haphazard manner in which the right is imported from other legislations without its accompanying restrictions, however, is impermissible. Under the NDPS Act, re-testing and re-sampling is rampant at every stage of the trial contrary to other legislations which define a specific time-frame within which the right may be available. Besides, reverence must also be given to the wisdom of the legislature when it expressly omits a provision, which otherwise appears as a standard one in other legislations. The legislature, unlike for the NDPS Act, enacted Section 25(4) of the Drugs and Cosmetics Act, 1940, Section 13(2) of the Prevention of Food Adulteration Act, 1954 and Rule 56 of the Central Excise Rules, 1944, permitting a time period of thirty, ten and twenty days respectively for filing an application for re-testing.

**25.** Hence, it is imperative to define re-testing rights, if at all, as an amalgamation of the abovestated factors. Further, in the light of Section 52-A of the NDPS Act, which permits swift disposal of some hazardous substances, the time-frame within which any application for re-testing may be permitted ought to be strictly defined.

**26.** Section 52-A of the NDPS Act reads as follows:

**“52-A. Disposal of seized narcotic drugs and psychotropic substances.—(1)**

The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that the Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or  
(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or  
(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and

certified by the Magistrate, as primary evidence in respect of such offence.”

**27.** Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the laboratories concerned, results of the same must be furnished to all parties concerned with the matter. Any requests as to re-testing/re-sampling shall not be entertained under the NDPS Act as a matter of course. These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing/re-sampling is strictly prohibited under the NDPS Act.”

9. Now being guided by aforesaid law, this Court would make an endeavour to find out whether application filed by the petitioner for re-testing can be said to be filed in exceptional circumstances or not. It has been averred in the application that petitioner-accused has been falsely implicated and contraband allegedly recovered from the conscious possession of the petitioner is not chitta/heroin, rather mixture of allopathic medicine and DDT.

10. At this stage, learned counsel for the petitioner attempted to argue that contraband was never recovered from the conscious possession of the petitioner, rather same was recovered from the conscious possession of the vehicle of co-accused and petitioner was simply passenger in the car. He further submitted that since petitioner had a scuffle with Additional Superintendent of Police, Sh. Sagar

Chand, prior to alleged recovery, afore Officer purposely with a view to harass the petitioner falsely implicated him in the case.

11. Having carefully perused the application for re-testing, this Court is not persuaded to agree with learned counsel for the petitioner that case of the petitioner falls in the category of rarest of the rare case or there is exceptional circumstances, which entitles petitioner for re-testing of contraband. Once factum with regard to recovery of contraband from the vehicle in which petitioner was one of the occupant is not denied, this Court sees no reason to agree with learned counsel for the petitioner that petitioner has been falsely implicated, especially when it is not in dispute that contraband came to be recovered in the presence of independent witnesses.

12. Similarly, no material, worth credence, has been led on record to prove that petitioner has been falsely implicated at the behest of some police official. Though, this Court is fully convinced that case of the petitioner does not fall in the category of exceptional circumstances, but even otherwise there is no plausible explanation rendered on record qua delay in filing the application for re-testing. Admittedly, in the case at hand, application for re-testing came to be filed after 113 days of receipt of report of chemical analysis. On the last date of hearing, learned counsel for the petitioner attempted to argue that report of chemical analysis was never made available to the petitioner by the Investigating Agency, rather same was made

available by learned trial court and immediately after receipt of such report, he filed an application for re-testing of the sample. This Court with a view to ascertain the correctness of the aforesaid submissions made by learned counsel for the petitioner passed order dated 13.03.2026, which reads as under:-

“After having heard learned counsel for the petitioner for some time, this Court finds it necessary to ascertain from Superintendent of Jail, Mandi to the following effect:

“i.) whether report of chemical analysis issued by SFSL, Junga, was served upon the accused namely Rajmal on 1.3.2024 or not?;

ii.) what is the procedure as per Jail Manual to supply the legal documents to the accused lodged in jail?

iii) Whether an accused can be straightaway served with the legal document or he or she can only be served through Superintendent of Jail.”

2. Superintendent of Jail is directed to answer the aforesaid query by way an affidavit, within one week.

3. Learned Additional Advocate General is directed to apprise the afore authority with regard to passing of the instant order today itself so that affidavit, as called for, is filed on or before the next date of hearing.

4. Court Master of this Court is directed to make available copy of the instant order to the learned Additional Advocate General by 4:30pm, so that same is transmitted to the afore authority via mail or fax.

List on 24.3.2026”

13. Pursuant to afore order, Superintendent of Jail, Mandi, District Mandi, Himachal Pradesh has filed his affidavit, stating therein that as per record available in Register No.16( Register of

persons passed In or Out of the Jail) on 01.03.2024 at 01.30 PM, HC Naresh Kumar No.20, Police Post City Mandi, District Mandi, Himachal Pradesh visited District Jail Mandi alongwith the SFSL Report, which was duly served upon the accused in the presence of Gate Keeper on duty and acknowledgement was obtained by the concerned police official from the said accused for official record. With a view to prove entry of police official on the given date, record of entry made in the Register of jail is also placed on record. Besides above, it has been further stated in the afore affidavit that there is no specific procedure laid down in HP Prison Manual 2021 for supply of the legal documents to the accused lodged in the jail, however, the legal documents are supplied to inmates as directed by the Hon'ble Courts in their orders. The law enforcement agencies like police, vigilance, CID, NCB, ED etc., are allowed to serve legal documents to prisoners through their special messengers in discharge of their official duties. The delivery of such documents are sometime endorsed by the office of Superintendent Jail on request, if any, made by the department concerned. Otherwise there is no provision for making any endorsement by the institution of jail.

14. Since it is apparent from the aforesaid affidavit filed by the Superintendent of Police, Jail, Mandi that report of SFSL was made available to the petitioner on 01.03.2024, he being dissatisfied with the same, if any, would have filed application for re-testing on or

before 16.03.2024. However, in the case at hand afore application came to be filed after delay of 113 days from the date of receipt of chemical analysis.

15. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds no illegality and infirmity in the impugned order dated 11.07.2024 passed by learned Special Judge, Mandi, District Mandi, Himachal Pradesh and as such, same is upheld.

16. In the aforesaid terms, the present petition is dismissed alongwith pending applications, if any.

**(Sandeep Sharma),  
Judge**

April 16, 2026  
(shankar)