



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 858/2025

1. Sadaram S/o Shri Kana Ram, Aged About 61 Years, R/o Sadram Ki Dhani, Village Liyadara, Jhab, Dist. Sanchore, Jalore
2. Manohar Lal S/o Shri Sadaram, Aged About 30 Years, R/o Sadram Ki Dhani, Village Liyadara, Jhab, Dist. Sanchore, Jalore
3. Budhram @ Bhutaram S/o Sh. Sadaram, Aged About 29 Years, R/o Sadram Ki Dhani, Village Liyadara, Jhab, Dist. Sanchore, Jalore
4. Bhanwarlal S/o Shri Sadaram, Aged About 31 Years, R/o Sadram Ki Dhani, Village Liyadara, Jhab, Dist. Sanchore, Jalore

----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Ganga Prashad S/o Shri Vishna Ram, R/o Jalsip P.s. Sanchore, Dist. Sanchore, Jalore

----Respondents

For Petitioner(s) : Mr. Ashok Upadhyay
Mr. Ramesh Kumar

For Respondent(s) : Mr. Deepak Choudhary, AAG
Mr. Vikram Singh Rajpurohit, Dy.G.A.
Mr. Suresh Bishnoi, AGA
Mr. Jethu Singh Dy.S.P. Sanchore
Mr. Kamlesh, SHO Jhab
Mr. Arun SHO, Jhab
Mr. Gangaprasad, Constable Jhab
Mr. Mangaram Constable, Jhab
Mr. Jagram, Constable, Jhab

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

ORDER PRONOUNCED ON :::: 07/04/2025
ORDER RESERVED ON :::: 06/02/2025

**BY THE COURT:-**

1. The instant Criminal Miscellaneous Petition under Section 482 Cr.P.C. (Section 528 B.N.S.S. 2023) has been preferred by the petitioners for quashing of the FIR No.56/2024 registered at Police Station Jhab, District Sanchore for offence punishable under Sections 8/22 & 29 of the NDPS Act.

2. Briefly stated the facts of the case are that the police, upon receiving information, conducted a search at the house of petitioner No.1, Sadaram. During the search, two individuals—Budharam alias Bhutaram (petitioner No.3) and Bhanwarlal (petitioner No.4)—attempted to flee but were apprehended. Upon searching a shed inside the premises, the police allegedly recovered 3.376 kg of the illegal drug Mephedrone (MD), along with an electronic weighing scale, plastic sealing machine, and a sum of Rs. 1,50,400/-, purportedly earned from the sale of drugs. The seizure of the suspect material was made and samples were taken for sending the same to the FSL for chemical examination.

2.1 As a matter of fact, after chemical examination, a report has been received from the FSL to the effect that the sent sample do not contain presence of any psychotropic substance, rather it was a neutral substance. The factual report submitted by learned Public Prosecutor along with a copy of the FSL report is shown to this Court, as per which, the samples were examined but no contraband was found.



2.2 In a subsequent development, the preserved control samples C1, C2 and C3 were sent to eliminate the doubt vide letter dated 09-01-2025. Surprisingly, the second sample which was the control sample and prepared at the time of making inventory was not approved by the FSL. The Final Report dated 26-03-2025 along with a copy of report of FSL dated 25-02-2025 has been supplied to this Court as per which presence of *Methamphetamine* (MDMA) or any opium alkaloid or any narcotic drug could not have deducted in the sample packed in each of the packets marked as C1, C2 and C3.

3. As on date, it can be concurrently stated that the case was registered on the suspicion of possession of contraband. However, this suspicion has not been confirmed by the report of the chemical examiner. As such, there remains no case against any of the accused-petitioners. Though as on date there is no such relevance in this case since second sample report has been received and the issue may no longer relevant, it is being mentioned, purely as a matter of caution that any request for retesting or re-sampling cannot be entertained under the NDPS Act as a matter of course rather such a request may only be made in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge, an application to this effect in such cases can be made within a period of 15 days of the receipt of the test report only then can an order to that effect be passed. No application for retesting or re-sampling can be entertained thereafter. In the absence of any compelling circumstances, any



form of re-sampling and retesting is prohibited under the NDPS Act. So, let it be made clear that no agency can send a sample for retesting or undertake re-sampling, outside the scope of the provisions and rules framed under the NDPS Act.

4. In the leading case ***Thana Singh Vs. CBN reported in (2013) 2 SCC 590*** Hon'ble the Supreme Court had an occasion to deal with above issue. The relevant paragraphs of the said judgment are being reproduced herein below:-

"E. Re-testing Provisions

23. 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 MANU/KE/0687/2001MANU/KE/0687/2001 : 2001 Cri LJ 2690; Nihal Khan v. The State (Govt. of NCT Delhi) MANU/DE/7016/2007MANU/DE/7016/2007 : 2007 Cri LJ 2074] 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

24. Hence, it is imperative to define re-testing rights, if at all, as an amalgamation of the above- stated factors. Further, in light of Section 52A 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. Section 52A of the NDPS Act reads as follows:-

52A. 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 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.

25. *Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the concerned laboratories, 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/resampling 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."*

From bare perusal of the case **Thana Singh** (supra) passed by the Apex Court, it is evident that retesting or re-sampling should not be treated a matter of routine and will only be allowed in some exceptional circumstances which should be supported by compelling reasons recorded by the Presiding Judge and the timeline framed for application for retesting must be adhered i.e., within 15 days of receiving the initial report and beyond this period, such requests shall not be entertained except in the most extraordinary cases.

5. This Court is of the considered opinion that retesting or re-sampling is generally prohibited under the NDPS Act, however, in exceptional circumstances—such as when the sample has been



damaged, has deteriorated, or has been accidentally wasted or consumed in the forensic laboratory—retesting or re-sampling may be considered. In such cases, upon receiving the forensic laboratory's report, communication, or relevant information, if the Trial Court deems it necessary to order retesting or re-sampling, it must not do so routinely or as a matter of course. It must provide specific reasons and establish reasonable grounds for such a direction after examining the police report and other materials on record. Only upon satisfaction of these conditions, and through a well-reasoned order, can the Trial Court direct retesting or re-sampling. In the absence of such justification, it is not permissible. In view of the legal as well as the factual position that no contraband is recovered in this case, the Misc. Petition deserves to be allowed.

6. Accordingly, the instant Misc. Petition is allowed. The FIR No.56/2024 registered at Police Station Jhab District Sanchore and all consequential proceedings pursuant thereto are hereby quashed and set aside. If petitioners are in custody, they shall be released forthwith.

7. Keeping the future in view, it is considered appropriate to issue the following directions:

- a) The Director General of Police, Rajasthan, is advised to ensure that all Station House Officers (SHOs) across the State are made aware of and adhere to the directions and observations mentioned above. A written communication in





this regard shall be issued within 60 days from the date of receipt of a copy of this order.

b) The Registrar General of this Court shall circulate a copy of this order to all Judicial Officers entrusted with the trial of NDPS cases, directing them to strictly adhere to the principles of law laid down in the preceding paragraphs of this order.

8. The Registry is further directed to send copies of this order directly to the Director General of Police and the Registrar General of this Court for necessary compliance.

9. The stay petition stands disposed of.

(FARJAND ALI),J

61-Mamta/-