

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 5th OF JANUARY, 2023

CRIMINAL REVISION No. 2360 of 2022

BETWEEN:-

**UNION OF INDIA CENTRAL BUREAU OF
NARCOTICS JAORA DISTRICT RATLAM
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI MANOJ KUMAR SON -ADVOCATE)

AND

**GOVIND S/O SHRI DILIP TIPAN, AGED ABOUT 30
YEARS, GANDHI NAGAR KARANCHARI COLONY,
MANDSAUR AT PRESENT LODGED IN SUB JAIL
JAORA DISTRICT RATLAM (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI GIRISH DESAI ALONG WITH MS.
NIDHI JAIN, - ADVOCATE)***

This revision coming on for admission this day, the court passed the following:

ORDER

This Criminal Revision has been filed against the impugned order/judgment dated 06/06/2022 passed by the Special Judge, (under the NDPS Act) Jaora, District – Ratlam in Crime no. 01/2022 registered at police station – CBN, Jaora, District – Ratlam, by which the trial Court has dismissed the application filed by the petitioner for re-testing of the sample

2. Brief facts of the case are that on 29/01/2022, the petitioner intercepted a car bearing registration no. MP-44-CA-6378 and during

search, recovered 290 grams heroin from the possession of the respondent/accused Govind. After proceeding of search, seizure of contraband and the vehicle, the respondent/accused was arrested. After taking two samples of the seized contraband, one sample was sent to Government Opium and Alkaloid Works, Neemuch for chemical analysis and as per the report dated 20/04/2022, it is concluded that the sample answers to the positive test for the presence of opiates possibility of presence of heroin in the sample cannot be ruled out therefore the sample be forwarded to CRCL New Delhi for its exact identification characterisation and quantification of opiate before taking any executive decision.

3. The petitioner filed an application before the trial Court for re-testing of the sample. After hearing both the parties, the trial Court rejected the application filed by the petitioner on the ground that in view of the judgment delivered in the case of **Thana Singh Vs. Central Bureau of Narcotic reported in (2013) 2 SCC (Cri) 818**, the case does not fall in the category of the exceptional case and the prosecution has failed to prove the provision of law and protocol, which is contrary to the said judgment. Being aggrieved by the impugned order, the petitioner has filed present revision before this Court.

4. Learned counsel for the petitioner has contended that in the present case, the prosecution filed an application for re-testing of the sample within 15 days and the report of GOAW, Neemuch specifically stated in its report that the sample shall be forwarded for retesting to CRCL New Delhi. The expert has advised for re-testing of the sample, hence the order of the trial Court is contrary to law and facts. Without considering the provision of the NDPS Act, the trial Court has rejected the application. Under these circumstances, learned counsel prays that

the impugned order be quashed and the application filed by the petitioner be allowed and the seized sample be sent for its re-testing to CRCL, New Delhi.

5. Learned counsel for the respondent/accused has opposed the revision and prays for its rejection by submitting that the impugned order passed by the trial Court is according to law and as per the judgment delivered by Hon'ble Apex Court in the case of **Thana Singh** (*supra*), therefore, this revision petition is not maintainable.

6. Section 52-A 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 herein- after specified.”

7. Hon'ble Supreme Court in the case of **Thana Singh** (*supra*), it has been held as under :

“27 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/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](#).”

8. Perusal of the aforesaid judgment shows that the application for re-testing of the sample can be allowed, if there are extremely exceptional circumstances for cogent reason and the application must be made within 15 days from the date of receipt of report, but the same cannot be allowed as a matter of course and without any compelling circumstances

9. In the instant case, the prosecution filed an application for re-testing of the sample within 15 days and the report of GOAW, Neemuch specifically stated in its report that the sample shall be forwarded for retesting to CRCL New Delhi. The CRCL New Delhi is an advanced laboratory in comparison to GOAW, Neemuch. Opinion of an expert is useful for the Court to make opinion regarding the seized contraband, therefore, in the circumstances of the case, it appears that there is extremely exceptional circumstances, in which re-testing of the sample is quite necessary. The trial Court did not consider all these aspect. Re-testing of the sample is quite necessary in the instant case.

10. In light of the aforesaid discussion, present revision petition filed by the petitioner is allowed and the impugned order dated 06/06/2022 passed by the trial Court is hereby set aside. The application for re-testing of the seized sample filed by the petitioner is allowed and the trial Court is directed to send the seized second sample of the contraband for the purpose of re-testing to CRCL, New Delhi according to law.

11. Present revision petition stands disposed of accordingly.
Certified copy, as per Rules.

(ANIL VERMA)
J U D G E

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