



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Bail App No. 54/2025 c/w
CRM(M) No. 969/2025**

Reserved on: 28.01.2026
Pronounced on: 16.02.2026
Uploaded on: 16.02.2026

*Whether the operative part or full
judgment is pronounced-**Full Judgment***

Mohd. Mansha & Ors.

.....Applicants/petitioners

Through :- Mr. M.A. Bhat, Advocate.
Mr. Masood Chowdhary, Advocate.
Mr. Shafiq Chowdhary, Advocate.

v/s

Union of India

.....Respondent

Through :- Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

- 01.** Since both the petitions trace their origin to the same Crime No. 10/2024 of NCB, Jammu, they are being disposed of by virtue of this common judgment.
- 02.** Petitioners have invoked inherent jurisdiction of this Court primarily for the quashment of charge-sheet; "NCB vs. Mohd. Mansha & Ors.", pending on the files of learned Principal Sessions, Rajouri, ["the trial court"], and order dated 16.05.2025 vide which they came to be charged for offences under Sections 8/21/25/29/60 NDPS Act. They also seek their liberation on bail.
- 03.** As the prosecution story would unfold, the respondent-NCB, on 16.04.2024, at 1630 hours, received source information that petitioners were on their way to smuggle a huge quantity of Narcotic Drugs in village Solki in Rajouri. Information was reduced into writing and brought to the notice of the



Superintendent, NCB Jammu. On the completion of legal formalities, the team same day left for Rajouri, at about 1730 hours. On 17.04.2024, the team reached village Solki at about 1730 hours. They tried to associate independent witnesses, but none acceded to their request. At about 1330 hour, the NCB team intercepted a suspect bike/motorcycle bearing registration No. JK11 F-3661, which was being driven by petitioner-Mohd. Rafiq and a vehicle bearing registration No. JK11 B 6509, moving alongside. Petitioners no. 1 to 3 were found sitting in vehicle No. JK11 B 6509. On search, a packet kept under the seat of petitioner-Mohd. Mansha, who was sitting on the left window side, opposite the driver seat, came to be recovered from the vehicle bearing registration No. JK11 B 6509. It suspected to contain Narcotic Drugs, wrapped in a transparent plastic polythene under cloth packing. The packet was opened in the presence of petitioners, and when some quantity of material was checked by way of NDD kit, it tested positive for heroin. The packet, with the packing material, weighed 0.900 kgs, whereas net weight of the contraband, without packing material, was found 0.870 kgs, which came to be seized and sealed on the spot. According to the investigating agency, all accused persons, petitioners herein, were in conscious possession of the contraband. Both the vehicles were seized on spot. Voluntary statements of petitioners, according to investigating agency were recorded and they were placed under arrest.

04. The investigating agency forwarded a sample of the contraband to CRCL Delhi for chemical examination. The lab report came to be received on 20.05.2024, whereby though it showed the presence of Viagra, it did not test positive for Heroin, Amphetamine, Methamphetamine, Ketamine, Methaqualone, Cocaine and THC. However, the investigating agency, for further confirmation, preferred an application in the trial court on 30.05.2024 for



re-testing of the second sample, which was allowed on the same day, and sample was forwarded to CFSL Chandigarh for re-testing. However, on the basis of report of CRCL Delhi, petitioners were admitted to interim bail by the trial Court on 18.09.2024, subject however to the rider that concession of bail would remain subject to the receipt of report from CFSL Chandigarh. The report from CFSL, Chandigarh was received by investigating agency on 20.12.2024, whereby Tramadol, Caffeine and Dextromethorphan came to be detected in the sample. On the receipt of this report, prosecution filed application before the trial court to recall the interim bail, and learned trial court, vide impugned order dated 05.02.2025, cancelled the interim bail and petitioners were remanded to judicial custody.

05. The investigation culminated in the presentation of impugned complaint/charge-sheet against the petitioners in the trial court. According to the investigating agency, facts of the case, evidence collected by it and attending circumstances suggest direct involvement of the petitioners in the commission of offences.

06. Petitioners are aggrieved of order dated 05.02.2025, vide which their interim bail came to be recalled after second sample sent by NCB tested positive for the presence of Tramadol, and they were remanded to judicial custody. Petitioners have questioned the procedure adopted by the investigating agency and approach of the trial court by contending that it is contrary to the statutory provisions regarding investigation of NDPS cases. It is contention of the petitioners that there is no provision or procedure in NDPS Act which enables investigating agencies to send second sample of a contraband for chemical examination after a lab report gives negative opinion.



07. The plea has been opposed on the other side by respondent-NCB primarily on the ground of gravity of the charge and application of Section 37 NDPS Act.

08. It is contention of the respondent that liberty of an individual is subject to reasonable exceptions, and, since a commercial quantity of Narcotic Drug has been recovered from the conscious possession of the petitioners, there is reasonable ground to believe that they are guilty of the commission of offences and they have been rightly charged by the trial court. It is also contended that both under law and on facts, the impugned complaint, *prima facie* discloses the commission of offences by the petitioners under NDPS Act; as such, petitions are liable to be rejected.

09. Having heard learned counsels for the parties, I have examined the record.

10. Petitioners have predominantly assailed the determination of learned trial court in having the second sample tested.

11. Mr. M.A Bhat, learned counsel for the petitioners has relied upon **Thana Singh vs. Central Bureau of Narcotics; 2013 (2) SCC 590** and **Jaswinder Singh @ Binder vs. State of Punjab, [CRM-M- 10795-2020; dated 22.04.2024]** to submit that once first sample ruled out the presence of heroin, second sample ought not to have been sent for re-analysis in the absence of any special or exceptional circumstances warranting such a course.

12. Having given thoughtful consideration to the submissions advanced by learned counsels on rival sides, I am of the considered view that in the factual scenario, instant case does not present a situation of extremely exceptional circumstance to call for re-testing of the sample.



13. The retesting provisions within the framework of NDPS Act came to be examined in **Thana Singh**, whereby Hon'ble Supreme Court lamented that though NDPS Act does not permit re-sampling or re-testing of samples, yet there has been a trend to the contrary that NDPS Courts have been consistently obliging to applications for re-testing and re-sampling, which often leads to procrastination of trials. Supreme Court clarified that the legislature, in its wisdom, has expressly omitted a similar provision in NDPS Act, which is otherwise a standard one in other legislations viz. 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, which permitted a time period of thirty, ten and twenty days respectively for filing application for re-testing. It was underlined that re-testing may be an important right of an accused, but the haphazard manner in which right is imported from other legislations without its accompanying restrictions is not permissible. Therefore, as an amalgamation of various factors, re-testing within the framework of NDPS Act came to be defined by Hon'ble Supreme Court and it was held that a request for re-testing or re-sampling shall not be entertained under NDPS Act as a matter of course, and it may, however, be permitted in extremely exceptional circumstances for cogent reasons to be recorded by the presiding judge and an application in such rare cases must be made within a period of 15 days of the receipt of the test report and not thereafter. Supreme Court, thus clearly ruled that in the absence of any compelling circumstance, any form of re-testing/re-sampling is strictly prohibited under NDPS Act.

14. Relevant excerpt of the judgment captured in Para 25, for the facility of reference is extracted below:-



“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/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.”

15. It is clear from the aforesaid enunciation that a request for re-testing or re-sampling under NDPS Act cannot be entertained as a matter of course on mere asking of the prosecution and it may be permitted in extremely exceptional or rare circumstances, for cogent reasons to be recorded by the presiding judge. Though it may not be possible to lay down myriad kind of all the circumstances in which a plea for re-testing or re-sampling can be allowed, however, there may arise occasions which would warrant recourse to a second test; for instance, where sample of a contraband sent for chemical examination is lost or misplaced in transit or in the laboratory, or it was subjected to damage or deterioration during transit or in the laboratory, or sample was accidentally wasted or consumed in the laboratory. There circumstances are illustrative in nature and it may not possible to lay down an exhaustive list of all the circumstances, which may call for intereference of the trial court for re-sampling or re-testing. In an appropriate case, upon a categoric report of the investigating officer or the forensic laboratory, as the case may be, the investigating agency may solicit indulgence of the concerned court for re-sampling and/or re-testing and court may, in its discretion, entertain such application and pass appropriate orders for reasons to be recorded in writing.

16. In the present case, the investigating agency sent a sample of the contraband to CRCL Delhi for chemical analysis. As per the report of CRCL



Delhi, the sample did not test positive for any Narcotic Drug or Psychotropic Substance, though, it showed the presence of Viagra. On the receipt of this report, petitioners were admitted to interim bail by the trial court vide order dated 18.09.2024. For further identification/confirmation, the investigating agency filed application before the trial court on 30.05.2024 for re-testing of the contraband, and on the same day it came to be allowed. The second report dated 20.12.2024 from CFSL Chandigarh came to be received and as per this report Tramadol, Caffeine and Dextromethorphan were detected in the sample. On the receipt of this report from CFSL Chandigarh, respondent filed application in the trial court to recall interim bail. Learned trial court, vide impugned order dated 05.02.2025, recalled interim bail and petitioners were remanded to judicial custody.

17. First of all, let us have a look at the application preferred by the prosecution in the trial court for re-testing of the sample. The contents of the application are extracted below:-

- “5). That on 17.04.24, Narcotics Control Bureau, Jammu seized 870 grams of Heroin (Try (without packing material) along with the vehicle No. JK 11B 6509 (207 Force India- 14 Ltd.) & other vehicle No. JK 11F 3661 (motorcycle-pulsar) which were used for trafficking of contraband, at Near Shamshan Ghat Village Solki, PS- Dharmsaal, Rajouri, J&K, from the possession of 1. Mohammad Mansha, 2. Mohammad Leynis, 3. Mohammad Imtaiz 4. Mohammad Rafiq, who were arrested in this case.
- 6) A case against them vide NCB Crime No.10/2024 under section 8, 21, 25, 29 & 60 of the NDPS Act, 1985 was registered by NCB Jammu. The accused admitted their guilt for trafficking of the seized heroin in the statement recorded u/s 67 NDPS Act 1985. After arrest, they were produced before Hon'ble court of Principal Sessions Judge Rajouri on 18.04.2024.
- 7) That, on 18.04.2024 an application u/s 52A NDPS Act, was filed before Ld. CJM Rajouri for certification of correctness of inventory, and samples of seized Narcotics drugs & psychotropic substance and controlled substances and on 19.04.2024 two samples were drawn from seized contraband in the presence of Sub-Judge/ Special mobile magistrate.
- 8) That, due to holiday on 20.04.2024 one of the samples was sent to CRCL, New Delhi for chemical examination on 21.04.2024. and **on 25.05.2025 Test report of sample was received from the CRCL, New Delhi which state that "the sample does not test answer positive test for Heroin, Amphetamine, Methamphetamine, Ketamine, Methaqualone, Cocaine & THC. It shows the presence of Viagra. Hence NCB Jammu intends to forward other sample to CFCL, Chandigarh for retesting.**

It is prayed that the said petition may be allowed please.”

(Emphasis Supplied)



18. The only ground urged for re-testing by the prosecution is that since report of CRCL, Delhi ruled out the presence of Heroin, NCB intended to forward other sample to CFCL, Chandigarh.

19. Now, what is intriguing is the reason assigned by the trial court while directing re-testing of the sample. For the ease of reference, impugned order is extracted below:-

“This application has been received by way of transfer from the Court of Ld. CJM Rajouri for disposal under law & same was presented in this Court by Sub-Insp. Ram Shankar Paswan of NCB Zonal Unit Jammu. wherein the above Officer has applied before this Court for forwarding the sample to CFCL Chandigarh for retesting of remaining sample in above said FIR.

I have perused the application which reveal that earlier sample were sent to CRCL New Delhi and test report has been received which is made part of the file and same has not tested positive for Heroin. **The main intention is to get the remaining sample retested through another laboratory. As such the present application is allowed and NCB unit Jammu is permitted to send the remaining sample to CFCL, Chandigarh for retesting.**

Application is accordingly disposed off and consigned to record room after due completion under rule.”

(Emphasis supplied)

20. It is evident from the aforesaid that since report of CRCL, Delhi was to the inconvenience of the prosecution, it filed application for re-testing, and learned trial court allowed the application on mere asking of the prosecution, which is not permissible in law. Neither prosecution assigned any justification, much less sufficient, to have the sample retested, nor trial court assigned any reason permitting NCB for re-testing of the sample. Once CRCL, Delhi, ruled out the presence of heroin in the sample sent by the investigating agency and determination of said laboratory was clear, categoric and specific, same could not have been overlooked by the trial court in a haphazard manner and re-testing of the sample ordered as a matter of routine.



21. For the foregoing reasons, the allegations contained in the impugned charge-sheet *prima facie* do not disclose the commission of any cognizable offence by the petitioners. Hence, present petition is allowed and impugned charge-sheet with all consequential orders is quashed.

22. With the aforesaid observations, both the petitions are disposed of.

(Rajesh Sekhri)
Judge

JAMMU
16.02.2026.
Abinash

Whether the judgment is speaking? **Yes**

Whether the judgment is reportable? **Yes**

