

**IA No. 1/25 in Ct. Case No. 38/25
Crime No. VIII/23/DZU/2025
NCB Vs. Kunal Pandey**

29.01.2026

Present: Sh. Ratnesh Deo, Ld. SPP for NCB (through VC).
Sh. R. Sahil, Ld. Counsel for accused alongwith
accused.

Vide my separate order of even date, the application filed by the NCB seeking sending of the corresponding samples for retesting, which is registered as IA No. 1/25 is dismissed and disposed of accordingly. Copy of the order be given *dasti* to the concerned parties.

Now to come up for addressing arguments on point of charge on **16.02.2026**.

**(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/N Delhi
29.01.2026**

IN THE COURT OF ATUL AHLAWAT
ADDL. SESSIONS JUDGE (SPECIAL JUDGE) NDPS ACT,
NEW DELHI DISTRICT, PATIALA HOUSE COURTS:
NEW DELHI

IA No. 1/25 in Ct. Case No. 38/25
Crime No. VIII/23/DZU/2025
NCB Vs. Kunal Pandey

29.01.2026

1. Vide the present order, I shall decide the application moved by the IO seeking sending second samples marked as Mark A and B to CFSL, Hyderabad, since the remnant samples Mark A and B have returned back with the report dated 13.10.2025 that presence of contraband was not found in the said respective samples.

2. As per the case of the prosecution, on the basis of secret information received at NCB DZU on 01.07.2025, a parcel bearing no. EL526194333IN was lying at FPO Delhi and the same was intercepted and the said parcel was having the name of the consignor as one Dheeraj Sharma. In the presence of independent witnesses, the parcel was opened and it was found containing 6.88 grams of cocaine (gross weight including the weight of polythene packet) and one LSD Blot. During the investigation, it was found that the parcel in question was ordered

by accused Kunal Pandey. The proceedings U/s 52 A were duly conducted before the Ld. JMFC on 21.08.2025. The samples mark A and B were sent to CRCL on 22.08.2025.

3. The said samples were returned back vide CRCL report dated 13.10.2025, in which it was categorically mentioned that the said samples did not show the presence of “*Cocaine, Heroin, Methamphetamine, Ketamine and THC*”.

4. As per the IO, since samples marked as A and B did not show presence of contraband covered under the provisions of NDPS Act, hence, the second corresponding samples are required to be sent to CFSL Hyderabad for their examination and exact identification.

5. Notice of the present application was duly issued to the accused and the detailed reply was filed. Copy of the reply was supplied to the NCB and the arguments were heard. Records were perused carefully.

6. It is submitted by Ld. Counsel for accused that there is no merit in the present application and same deserves to be dismissed.

7. It is submitted by Ld. Counsel for accused that there are no extreme circumstances mentioned or averred in the present application. For re-testing or re-sampling, two conditions needs to be satisfied. First, the party seeking the retesting must state and make out its case for exceptional circumstances. The present application is devoid of any such circumstance and it is being filed mechanically, without there being any cogent reasons in support thereof. Furthermore, the application does not state as to why the report filed by the CRCL is inconclusive and which particular test was not performed

8. Upon a specific query being put to the IO, as to why the present application has been preferred, since there is no mention of any mandatory test which was not conducted in the present case or there being any tampering with the samples. The IO could not give any satisfactory reply. No explanation was offered by Ld. SPP for NCB as to substantiate any extraordinary grounds to allow the present application.

9. There is no averment as to any technical defect with the process employed by the CRCL Lab or that the sampling and chain of custody was not maintained for the integrity of the samples in question.

10. As far as the law governing the re-testing of the corresponding samples is concerned, it is no longer *res integra* that although there is no provision under the NDPS Act, 1985 for re-sampling the same may be permitted in extremely exceptional circumstances, for cogent reasons to be recorded by the Ld. Presiding Judge. Reliance is placed upon the decision of Hon'ble Supreme Court of India in "**Thana Singh Vs. Central Bureau of Narcotics**", (2013) 2 SCC 570 and decisions of Hon'ble High Court of Delhi in "**Nihal Khan Vs. State (Govt. of NCT of Delhi)**" 2007 SCC OnLine Del 14 and "**T. Letminlen Haokip Vs. Customs**" 2019 SCC OnLine Del 104214. The Hon'ble Supreme Court of India in the land mark decision of **Thana Singh (Supra)** had categorically held that any application seeking re-testing/re-sampling shall not be entertained under the NDPS Act as a matter of course. The application in rare cases must be made within the period of 15 days of the receipt of the test report.

11. As per the receiving of the IO on the report, the said report was received by NCB DZU on 17.10.2025 and the application was made within the period of 15 days. Therefore, the same is filed within the prescribed time in view of the decision of the Hon'ble Supreme Court of India.

12. The relevant portion of the test report qua samples A and B is re-produced below for ready reference:

“Test Report

Report is admissible under Section 329 BNSS 2023

PACKING DETAILS:

Received one sample packet marked as E in sealed and intact condition. The sample packet was found sealed with three lac seals. Impression of each seal affixed on the sample packet tallied with the facsimile of the seal as given on the test memo.

At the time of taking out the sample from strong room for analysis, the sample packet marked as E was in sealed and intact condition, Impression of the seal affixed on the sample packet tallied with the facsimile of the seal as given on the test memo. On opening the sealed sample packet, it was found to have two plastic pouches inside containing the samples marked as A and B respectively.

REPORT:-

CLD-1822 (N) (Plastic Pouch Marked as A):- *The sample as received is in the form of white moist lumps and powder. On the basis of Chemical, Chromatographic and Spectroscopic examinations, it is concluded that the sample under reference **does not show the presence for the ‘Cocaine, Heroin, Methamphetamine, Ketamine and THC’.** (emphasis supplied is mine). For further confirmation/exact identification, the sample may be forwarded to any Government Laboratory, if required.*

CLD-1822 (N) (Plastic Pouch Marked as B):- The sample is in the form of blotting paper kept in plastic pouch weighing 10.5 mg only, which is insufficient for testing. Hence untested sample is returned herewith as such

S. No.	CLD No.	Marked as	Gross weight of sample received with plastic pouch (gm)	Gross weight of remnant returned with plastic pouch (gm)
1	1822(N)	A	5.8	4.2
2	1823(N)	B	0.76	0.76

Facsimile of seal “CENTRAL REVENUES CONTROL LABORATORY GOVT OF INDIA-2” affixed on sealed remnant sample is as under.”

13. Perusal of the test report categorically reveals that the sample Mark A and B were received at CRCL Lab in sealed and intact condition. Impression of each seal affixed on the sample were duly tallied with the facsimile seal given on the test memo. Therefore, there is a categorical finding that at the time of taking out of the samples from strong room, for analysis, both the said samples were in sealed and intact condition. The impression on each seal affixed on the samples packet was tallied again with the facsimile seal. After the examination was conducted on the basis

of “Chemical, Chromatographic and Spectrography Examination”, it was conclusively mentioned that the sample Mark A under reference did not show the presence for NDPS substances. Furthermore, due to the weight of the sample Mark B was found to be only 10.5 mg, which was insufficient for testing, hence it was returned back.

14. There is no case made out by the NCB that either the sampling which were done before the Ld. JMFC was improper or that they were tampered with or due to any other reason the samples did not represent the contraband allegedly recovered in the present case or that the appropriate test could not be conducted by CRCL. The report prepared by the CRCL expert is of conclusive nature and merely because it has been mentioned in the said report that for further confirmation, exact identification the samples may be forwarded to any government laboratory does not mean that the second samples have to be sent to any other lab as a matter of ordinary course.

15. The CRCL Pusa, New Delhi is a reputed government lab which was established under the aegis of Ministry of Finance and Department of Revenue, Govt. of India and is the official lab of NCB, which is also established under the Ministry of Finance and Department of Revenue, Government of India.

16. The report given by CRCL in the present case are conclusive reports and there is no inability to give a definitive opinion for want of facilities, as cited by the concerned lab in the said case.

17. There is not even a single ground mentioned in the present application or argued by the Ld. SPP for NCB to establish the compelling circumstances for ordering re-testing of the corresponding samples. Therefore, in view of the law laid down by Hon'ble Supreme Court of India in *Thana Singh (Supra)*, there is no merit in the present application and same is hereby dismissed.

18. Copy of this order be given *dasti* as prayed for to both the parties.

(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/N Delhi
29.01.2026