

IA No. 13/22

SC No. 373/2019

State v. Majhar Khan @ Sonu & Anr.

FIR No.100/19

PS Crime Branch

U/sec. 21/29 NDPS Act & 50/177 M.V.Act

20.09.2022

**ORDER ON APPLICATION FOR
SEEKING DIRECTIONS FOR THE IO FOR RETESTING/
RE-EXAMINING/RE-ANALYZING THE REMNANT OF
THE CASE PROPERTY FILED BY THE ACCUSED
MAJHAR KHAN.**

1. This order of mine will dispose of an application filed by the accused, vide which, the accused has sought directions for the IO for retesting/re-examining/re-analyzing the remnant of the case property.

2. It is stated in the application that during the cross-examination of the witness of the prosecution, it is emerged that the weight of the contraband alleged to have been recovered varied, as the same was manipulated by the investigating agency.

3. It is also stated in the application that the alleged the remnant was lying with the department and the same was never analyzed and prayed for directed to produce the remnants of the alleged contraband before the court and for sampling the same and for sending the same to the Forensic Laboratory for analyzing the same.

4. I have heard counsels for the parties.

5. The counsel for the accused has submitted that sample of the contraband was never analyzed and prayed for taking the samples of the contraband alleged to have been

recovered from the accused and for sending the same samples to the Forensic Laboratory for retesting/re-examining and re-analyzing. He has relied upon the judgment passed by Hon'ble High Court of Delhi in Nihal Khan v. State (2007, CriLJ 2074).

6. On the other hand, Ld. APP for State has vehemently opposed this application, and submitted that the samples of the contraband recovered from the accused were sent to the Forensic Science Laboratory at Rohini, Delhi and after analyzing the same, the Forensic Science Laboratory had given its report dated 18.07.2019 and submitted that since this report of FSL was received alongwith the charge sheet and charge-sheet in this court was filed in this court on 14.10.2019. He has further submitted that when the case is running at the stage of evidence of the prosecution, this application has been filed by the accused on dated 06.05.2022 and further submitted that since this application has been filed at belated stage, so, this application may be dismissed. He has relied upon the judgment passed by their Lordship of Supreme Court in case "***Thana Singh Vs. Central Bureau of Narcotics Crl. Appeal No. 1640 of 2010***".

7. I have given thoughtful consideration to the submissions made by the Id. Counsels for the parties and perused the record.

8. The perusal of the record reveals that two polythene bags one containing 250 gm of heroin and other containing 750 gms heroin are alleged to have been recovered under the seat of the motorcycle, whereon, both the accused were traveling and charge U/sec.21(C) of the NDPS Act has been framed against both of the accused and charge U/sec. 192 of The Motor Vehicle

Act has also been framed against accused Majhar Khan @ Sonu.

9. The counsel for the accused has submitted that the sample of the contraband was never analyzed, so, he has prayed for retesting/re-examination and re-analyzing of the remnants. This counsel for both the accused has relied upon judgment passed by the Lordship of High Court of Delhi in Nihal Khan vs. State Govt of NCT of Delhi(Supra).

10. Since, the Lordship of Supreme Court in case “**Thana Singh Vs. Central Bureau of Narcotics**” (2013) 2 Supreme Court Cases 590 was pleased to observe as under:-

“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.”

11. Thus from the law laid down by Hon’ble Apex Court in the above said judgment, it is Cristal clear that such application for retesting/re-sampling could be filed within 15 days from the receipt of the test report and in the case in hand, the accused has pleaded in his application that the sample have never been analyzed, but, from the report of the FSL, it is Cristal clear that the samples of the contrabands alleged to have been recovered from the accused were analyzed and the result thereof was prepared in the year 2019 as the report bears the

date 18.07.2019 and since the report was received in the court alongwith the charge-sheet which was filed in this court on dated 14.10.2019 and the present application has been filed on dated 06.05.2022 therefore, in the light of law laid down by the Hon'ble Apex court in the Thana Singh judgment (Supra), this application is hereby dismissed being devoid of merit.

ANNOUNCED IN THE OPEN COURT ON 20.09.2022

(PAWAN KUMAR MATTO)
Addl. Sessions Judge (Special Judge NDPS)
North East/KKD Courts/Delhi/20.09.2022