IN THE HIGH COURT OF SINDH, KARACHI
Cr. Misc. Application No.941 of 2023

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Applicant:-	Irfana Asghar through Mr. Shah Imroz Khan, Advocate.
Respondent:-	The State/ANF through Mr. Waqar Ali, Special Prosecutor, ANF a/w Faisal Bohio, Assistant Director Law, ANF.
Date of hearing:-	27.08.2026
Date of decision:-	04.09.2026

O R D E R
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MUHAMMAD IQBAL KALHORO J: Applicant, who is widow of late accused Muhammad Asghar, has impugned an order passed by Special Court-I (Control of Narcotic Substances) Karachi on an application moved u/s 19 read with section 39 of Control of Narcotics Substances Act, 1997 by the Assistant Director (Assets), Anti-Narcotics Force, Karachi for forfeiture of bank accounts in the name of her late husband and herself, and a House No.324, Sector 15/A/5, admeasuring 120 square yards, North Karachi Township, Karachi in her name in the record of rights, on the ground that those assets were purchased by late accused from the income generated through the narcotics business.

2. The record reflects that applicant's late husband was involved at least in two narcotics cases viz. Crime Nos.6/2011 (PS ANF-I Karachi) and 35/2011 (PS ANF-II Karachi). In Crime No.6/2011, six Kgs heroin was recovered and in Crime No.35/2011, a total of 18.800 Kgs heroin was recovered from the late accused. In Crime No.6/2011, he pled guilty and was awarded two years imprisonment. ANF filed a revision application

before this Court seeking enhancement of sentence which was allowed and his sentence was turned into 11 years along with fine vide order dated 14.05.2013. This decision was unsuccessfully challenged by late accused before the Supreme Court. While in Crime No.35/2011, the late accused was convicted for a sentence already undergone by him vide a judgment dated 11.05.2012. This judgment was challenged by ANF in a revision application before this Court seeking enhancement of the sentence. Meanwhile, late accused, admitted in a hospital, died of natural death and in view of such fact the revision application was disposed of having been abated. It was only thereafter ANF moved the application for forfeiture of assets of the deceased accused, as detailed above.

3. Applicant's counsel has mainly argued that applicant was not the accused in either crimes; she had purchased the property before registration of the said cases; she was not given a show-cause notice before forfeiture of the property, as required by law; she was not given a fair chance to defend the property owned by her. He has relied upon 2011 SCMR 1527, 2012 SCMR 167, 2013 P CrLJ 208 and 2014 PCrLJ 267 to support of his contentions.

4. On the other hand, learned Special Prosecutor ANF has opposed the application and has submitted photocopies of certain documents to establish that applicant herself is an absconder in Crime No.35/2011 and proclaimed offender in Crime No.41/2016, registered at PS ANF Clifton, Karachi. Learned counsel has further read out section 19 and section 39 of CNS Act to urge that properties owned by applicant are liable to forfeiture. As per him, the notice of application was given to applicant and other relatives of the deceased accused who had contested the

matter, as is evident from the impugned order, but failed to establish any source of income justifying acquisition of the subject properties.

5. We have considered submissions of the parties, perused material available on record and taken guidance from the cited case law. From the facts, it is evident that late husband of the applicant was convicted in at least two cases in which huge quantity of narcotics i.e. heroin was recovered from him. In one case (FIR No.6/2011 of PS ANF-I Karachi), his conviction and sentence was upheld even upto the Supreme Court. In other case (FIR No.35/2011 of PS ANF-II, Karachi), he did not challenge his conviction and sentence. On the contrary, the prosecution had filed a revision application for enhancement of his sentence, given the recovery of huge quantity of narcotics i.e. 18.800 Kgs, but on account of his death, the same was abated.

6. In the bank account No.0857-00171371-03 maintained by deceased accused in Habib Bank Ltd., Gulistan-e-Johar, Karachi, an amount of Rs.5,06,250/- was found deposited; whereas in the bank account No.01-1590560-01 maintained by applicant in the Standard Chartered Bank Ltd. Hyderi North Nazimabad, Karachi, an amount of Rs.63,765/- was found deposited. The house was found purchased in November 2011 in the name of applicant against sale consideration of Rs.1,55,50,000/-. The history of transactions in the bank account of deceased accused, duly traced in the impugned order, shows that the bulk of the amount was transferred from this account to the attorney of the owner of the house.

7. The trial Court has also noted that the documents i.e. bank-opening-form on record showed that applicant was a household lady, sans of any apparent source of income to purchase the house and maintain the amount in her bank account. The trial Court on the basis of such evidence and documents has concluded that neither applicant nor

the other relatives of late accused had any source of income to purchase the said house and it was done by late accused from his own sources.

8. The learned counsel in his arguments has mostly emphasized that applicant was not given a show-cause notice before forfeiture of the house of which she is the registered owner. We have noted that the trial Court, while forfeiting the subject properties, has exercised powers u/s 19 and 39 of the CN S Act, 1997. Section 19 lays down that irrespective of any term awarded u/s 13 of CNS Act, if the Special Court finds an accused guilty and sentence him for a period of more than one year, the Court shall also order that his assets derivable from trafficking in narcotics shall stand forfeited to the Federal Government. Unless the Court is satisfied, for which the burden of proof shall rest on the accused, that they or any part of such assets has not been so acquired.

9. The conditions precedent empowering the Court under this provision to forfeit the assets of the accused are (i) the accused is found guilty, (ii) his sentence is more than one year, and (iii) the Court is satisfied that the assets have been derived from income generated from narcotics business. If for any reason, such order is not passed at the time of pronouncement of judgment, as required, despite all the conditions duly met. And there is record indicating that the accused is owner of certain assets derived from the narcotics business, the prosecution has an option u/s 39 to move an application for forfeiture listing all such assets in his name or in the name of his associates etc.

10. It is further provided in the said provision that the Court shall not pass any such order, unless a reasonable opportunity of hearing is given to the persons likely to be affected by such order. The impugned order shows that not only the applicant who was going to be affected by such order was given a notice but the other relatives of the deceased accused

were also extended an opportunity to contest the application. Not only on behalf of the applicant, but also for the other relatives of the deceased accused, the advocates had appeared and contested the application vigorously. The line of their argument before the trial Court was that since in the original order, passed on plea of guilt of the accused, no direction regarding forfeiture of the assets of the accused was passed. And when applicant's case was decided by the High Court in revision application, nothing was said on this point and no forfeiture of the assets was ordered, the trial Court was bereft of any jurisdiction to pass such order.

11. Contrary to that, before us, in fact a different line of arguments by the advocate of the applicant has been advanced. Here, he has urged mainly that the applicant was not issued a show-cause notice, hence the order is illegal. The advocate neither could satisfy the trial Court of genuinity of his arguments, nor has he succeeded in persuading us that the order of the forfeiture of the assets of the late accused has been passed without affording a reasonable opportunity of hearing to the applicant. But, in any case, it is not factually correct that applicant was not given a fair opportunity of hearing by the trial Court. The impugned order clearly conveys the fact that the applicant and other relatives of the deceased accused were heard at length, their arguments were considered and only then impugned inference was drawn.

12. It would seem that powers u/s 19 and 39 CNS Act, 1997 need to be applied at different stages/situations. The Court is indeed bound by law, while pronouncing the judgment, to pass the order of forfeiture of assets u/s 19 on finding the accused guilty of offence (conviction) and sentencing him for more than one year and on being satisfied about acquisitions of the assets by the accused from narcotics business. If for

any reason, including but not limited to any lack of details qua assets of the accused, or absence of the evidence that the properties are earned from narcotics business, the order is not passed. The Court has the authority to pass the similar order in terms of section 39 of CNS Act on the application moved by the prosecution along with a list of such assets. Under section 39, likewise u/s 19, the Court needs to satisfy itself that the assets are liable to forfeiture because they have been generated, derived or obtained in contravention of section 12 which prohibits acquisition and possession of assets derived from narcotic offences.

13. This whole outlook binds the prosecution to furnish the relevant evidence to support its plea that the assets have been derived by late accused from narcotics business. We have seen that in this case the fact that the late accused was a drug dealer and had indulged in narcotics business is pronounced indelibly from his conviction and sentence in at least two cases of narcotics. The history of his bank transactions indicates that the same were carried out, more or less, at the same time when he was active in narcotics business. The money i.e. Rs.37,00,000/- transferred to attorney of the owner of the house through a Cheque No.2950205 issued by late accused furnishes enough evidence that the house was purchased from his sources. The alignment of all such circumstances and their coincidence coupled with the fact that applicant has altogether failed to establish her own independent source of income has induced a pointer leaning in favour of prosecution claim that the assets were obtained by the late accused from narcotics business.

14. As against it, neither the applicant, nor the other relatives of late accused could put forward any evidence, documentary or otherwise, to

hint their own source of income justifying purchase of such properties independent of any concern with the late accused. The bank-opening-form of applicant clearly indicates that she was a household lady at the relevant time, she has not produced any evidence to prove otherwise so as to convince us to accept her claim of being the actual and genuine owner and maintaining the bank account from her own sources. When she has not been able to put forward any explanation qua the manners, in which she acquired the capital, to maintain her bank account etc., and there was sufficient evidence to convince the Court otherwise, the Court was left with no option but to form an opinion in favour of the State and order forfeiture of the assets of the late accused.

15. In addition, we may say, applicant is not only wife of the late convict, but as per record produced by Special Prosecutor ANF, herself also an absconder in one case (Crime No.35/2011) and proclaimed offender in another (FIR bearing No.41/2016), both registered under the relevant provisions of CNS Act, 1997. Her such position considered in tandem with entire material as above is an extra circumstance disentitling her to the relief claimed by her.

16. We are aware that superior Courts in various decisions [1]have always held that Court shall not routinely pass orders of forfeiture of property of accused in narcotics case, unless the Court is satisfied that the assets have been derived, generated or obtained by him in contravention of section 12. It has been a constant view of the Courts that mere conviction of the accused is not a reasonable ground/circumstance justifying forfeiture of his property unless there is evidence showing that

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[1] The State/ ANF Sindh v. M/s. Naushad Ali & Saleem Associates Builder (2007 SBLR 231); The State/Anti-Narcotics Force v. Parvez Hassan Haravi and another (2018 SCMR 1397); The State/Anti-Narcotics Force, Ministry of Interior Narcotics Control through Deputy Director (Law), Karachi v. Parvez Hassan Haravi and another (PLD 2017 Sindh 140); The State and another v. Rana Nisar Ahmad and another (2012 SCMR 167); The State and another v. Umer Hayat and another (2011 SCMR 1527); The State/Anti-Narcotics Force through Deputy Director (Law) v. Jehanzeb (2019 YLR 106;

the assets have been purchased by him from the sources generated through narcotics business. It is mainly in such context that the Courts have been very cautious and slow in forfeiting the properties of the accused in narcotics cases. It is reiterated again and again that properties of the accused would not be liable to forfeiture just because there is conviction recorded against him. Unless, of course, there is evidence that the properties have been acquired from narcotics business, and apparently there is no record of any other source of income of accused.

17. With due respect to all the views expressed on this point earlier, with which we respectfully concur, in our view, the facts of the present case are quite distinguishable. It is not mere conviction of the late accused which had apparently influenced the Court to pass the impugned order. But also prosecution's ability in bringing on record transmission of a major part of sale consideration to the seller of the house through the cheque issued by the late accused, besides the fact that applicant herself is a proclaimed offender in narcotics cases, has convinced the trial Court to conclude that the subject assets were derived/obtained from the source generated through narcotics business by the late accused.

18. We have before us no material rebutting the said conclusion. Hence, finding no merits, we dismiss this application.

The application is accordingly disposed of.

JUDGE

JUDGE

HANIF