

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 344 of 2018

Appellant : The State (ANF),  
Through M/s. Mohsin Ali Khan & Asad Aftab  
Solangi, Special Prosecutors ANF.

Respondent No.1 : Syed Aitemad Hussain Zaidi  
Through M/s. Muhammad Ahmed Masood and  
Shariq A. Razzaq, Advocates.

Date of hearing : 21.05.2025

Date of judgment : 30.05.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.**- This Special Criminal Appeal has been instituted by the State through the Anti-Narcotics Force (hereinafter referred to as "the Appellant") under Section 43 of the Prevention of Smuggling Act, 1977 ("the Act of 1977"), impugning the order dated 07.02.2018, passed by the learned Special Judge, CNS-II, Karachi, vested with jurisdiction as Special Judge Customs and Anti-Smuggling, in Special Case No. 03 of 1995 (renumbered as Special Case No. 214 of 2015). By virtue of the impugned order, the learned Special Judge directed the release of immovable property described as Flat No. C-2, Tower-C, measuring about 2,100 square feet, situated on Plot No. 7/8, Block-2, Kahkasha, Clifton, Karachi, within the Palm Beach Homes Project, from the list of properties previously frozen under the provisions of the Act of 1977.

2. The genesis of the instant proceedings originates from an information submitted by Inspector Muhammad Ahmed Tatari of the Asset Branch, Anti-Narcotics Force (ANF), under Section 31 of the Prevention of Smuggling Act, 1977, before the learned Special Judge, Customs and Anti-Smuggling, Karachi, in the year 1995. The information sought the forfeiture of various immovable properties allegedly acquired through illicit narcotics proceeds by the proclaimed drug trafficker Muhammad Anwar Khattak, his family members, and associates. The record reveals that Muhammad Anwar Khattak was arrested on 25.04.1985 and subsequently convicted on 13.07.1991, receiving a sentence of seven years' rigorous imprisonment along with a fine of Rs. 5,000,000/-.

Furthermore, he was convicted on 21.03.1997 by a United States court in New York for transnational drug trafficking offenses. He was also declared absconding in a case emanating from FIR No. 155 of 1983, concerning the seizure of 6.5 metric tons of charas. During the inquiry, it transpired that numerous assets including the property presently in dispute, were allegedly acquired through drug proceeds by the said accused, his family members, and associates. Consequently, a freezing order under Section 6(4) of the Anti-Narcotics Force, Act, 1997 was issued on 19.01.1995. Thereafter, a formal notice was issued by the learned trial Court on 10.10.1996, pursuant to the application under Section 31 of the Act.

3. The immovable property in question, namely Flat No. C-2, Tower-C, Palm Beach Homes, was initially purchased in the year 1991 by Syed Aitemad Hussain Zaidi (Respondent No. 1) from M/s Al-Ghazi Associates, a business entity allegedly owned and operated by Muhammad Anwar Khattak. Subsequently, on 26.11.1995, Respondent No. 1 transferred his interest in the said flat to Dr. Khatumal Jeewan through a registered General Power of Attorney. Thereafter, Syed Mohammad Mohsin, acting as sub-attorney, acquired title to the said flat from Dr. Khatumal Jeewan on 29.01.2005. It is pertinent to note that an earlier application seeking release of a similar property within the same housing project, preferred by an attorney of Farah Deeba, was dismissed on 16.06.2009 on the ground that only the lawful owner could competently institute such a plea. Subsequently, Respondent No. 1, acting through his sub-attorney Syed Mohammad Mohsin, filed an application under Section 32 of the Act on 19.07.2012 seeking release of the subject property. The said application was allowed by the learned Special Judge vide order dated 07.02.2018, whereby the property was excluded from the list of frozen assets, subject to the furnishing of a bond equivalent to its prevailing market value.

4. Learned Special Prosecutor for the Anti-Narcotics Force (ANF) has vehemently assailed the legality and propriety of the impugned order, asserting that the same is liable to be set aside on multiple grounds. It was submitted that the learned trial Court gravely erred in directing the

release of the subject property, despite its established nexus with the notorious narcotics trafficker, Muhammad Anwar Khattak, and its suspected acquisition through proceeds of crime. Emphasis was laid on the fact that the freezing order dated 19.01.1995 and the subsequent notice issued under Section 31 of the Prevention of Smuggling Act, 1977 on 10.10.1996 were duly issued to secure such tainted assets. It was further contended that Respondent No. 1, Syed Aitemad Hussain Zaidi, lacked legal standing (*locus standi*) to purchase the property from M/s Al-Ghazi Associates (Pvt.) Limited, an entity allegedly controlled by the said drug kingpin. Invoking the equitable doctrine of *caveat emptor*, the learned Prosecutor argued that the respondent bore the responsibility to ensure that the title was unencumbered and not derived from proceeds of illicit activity. Moreover, it was contended that the alienation of the subject property through successive transfers, subsequent to the issuance of the freezing order and the statutory notice under Section 31, constituted a direct contravention of Section 35 of the Act. As such, these transactions were void *ab initio* and rendered all such purchasers liable to penal consequences under the statute. The appellant also criticized the trial court's failure to summon and examine the interveners, namely, the respondent and his sub-attorney, so as to test the *bona fides* of the transaction and ascertain the legitimacy of their claim. The learned Prosecutor submitted that the principal case (Special Case No. 03/1995) remains *sub judice*, and the premature de-freezing of the asset undermines the prosecution's efforts to dismantle financial infrastructure of drug networks and provides an unintended safe haven to accomplices and beneficiaries of narcotics proceeds. It was further urged that the impugned order was passed in undue haste, solely on the assertions made by the intervener, without requiring cogent proof of lawful consideration or source of funds. In conclusion, it was submitted that the order is patently illegal, suffers from material irregularities, and sets a dangerous precedent by creating a "technical escape route" for criminal collaborators under the guise of innocent purchasers.

5. Conversely, learned counsel representing the respondents opposed the appeal with equal force, terming it not maintainable both on facts and in law. As a preliminary objection, it was contended that the instant

appeal is barred by limitation under Section 43 of the Act, which prescribes a limitation period of thirty days from the date of the order. It was pointed out that while the impugned order was pronounced on 07.02.2018, the certified copy thereof was made available on 27.03.2018, and the present appeal was instituted on 21.04.2018, exceeding the statutory limitation by fourteen days. No application for condonation of delay was filed, thereby rendering the appeal *ex facie* incompetent. The learned counsel placed reliance upon the binding judgment of this Court reported as 2013 MLD 1290 titled *State/ANF through Deputy Director v. Dr. Abdul Hakim Abrash & another*, wherein it was held that in the absence of service of notice under Section 31 upon the bona fide title holder, any embargo on the property is rendered ineffective and unenforceable against such purchaser. It was argued that this settled proposition of law squarely applied to the present controversy, and the attempt by the appellant to re-litigate an adjudicated matter is legally impermissible. Addressing the merits, it was submitted that the respondent acquired the subject property well prior to the issuance of the freezing order (19.01.1995) and notice under Section 31 (10.10.1996). The chain of transaction was meticulously presented: the first installment for the property was paid on 20.12.1987 in the name of the respondent's son; a "No Dues Certificate" was issued on 19.08.1990; and the respondent obtained lawful possession through sub-lease executed on 25.07.1991. The freezing and notice proceedings occurred long after the bona fide acquisition. Furthermore, the name of Respondent No.1 was conspicuously absent from the list of persons notified under Section 31. It was emphatically argued that there exists no material linking Respondent No. 1 to Muhammad Anwar Khattak, either as a relative, associate, or conspirator, and the entire case against the respondent rests on conjecture and presumption without evidentiary foundation.

6. Learned counsel for the respondents further contended that the impugned order reflects a well-reasoned and judicious application of discretion by the learned trial Court. It was submitted that the trial Court rightly held that no admissible evidence was led by the ANF to connect Respondent No. 1, Syed Aitemad Hussain Zaidi, to the alleged criminal enterprise of Muhammad Anwar Khattak, save for the speculative

assertion regarding the ownership of M/s Al-Ghazi Associates. The Court's decision to allow the application under Section 32 of the Act, subject to the execution of a bond for the prevailing market value of the property, was a balanced measure aimed at preserving the State's interest while simultaneously safeguarding the rights of an ostensible bona fide purchaser. It was stressed that the burden to establish any violation of Section 35, or to demonstrate a continuing nexus between the respondent and accused, remained upon the ANF and was not discharged during trial proceedings. Accordingly, no interference with the well-reasoned order of the trial Court is warranted.

7. I have extended anxious and deliberate consideration to the rival submissions advanced by learned counsel for the respective parties. The record has been thoroughly examined, including the impugned order, the interlocutory proceedings, past order sheets of this appeal, and all material placed before the Court. The determination of this matter necessitates adjudication upon two primary legal dimensions: (i) the maintainability of the appeal in view of the statutory limitation prescribed under the governing statute, and (ii) the applicability and binding force of precedent laid down in State/ ANF through Deputy Director v. Dr. Abdul Hakim Abrash and another (2013 MLD 1290), particularly in relation to notice requirements under Section 31 of the Prevention of Smuggling Act, 1977.

8. The foremost legal impediment to the maintainability of the present appeal lies in the manifest bar of limitation. Section 43 of the Prevention of Smuggling Act, 1977, prescribes a rigid limitation period of thirty days for filing an appeal against an order passed by the Special Court. In the instant case, the impugned order was passed on 07.02.2018, and the certified copy thereof was issued on 27.03.2018. The present appeal, however, was instituted on 21.04.2018, i.e., well beyond both the date of order and the issuance of the certified copy. From the date of the order itself, a period exceeding two months had elapsed, and even from the date of certification, a delay of at least twenty-five (25) days had occurred. It is a cardinal principle of procedural jurisprudence that statutory time limits for filing appeals are mandatory and not directory in nature. The

appellant has neither tendered explanation for this delay nor filed an application seeking condonation thereof under Section 5 of the Limitation Act, 1908. In the absence of any plea or material showing sufficient cause for the delay, the appeal is incurably time-barred. It is trite law that in matters governed by special statutes, such as the PSA, 1977, limitation provisions operate with even greater strictness due to the penal consequences involved. The failure to adhere to procedural discipline, particularly when delay is not attributable to any act or impediment created by the respondent or the court, disentitles the appellant from seeking equitable indulgence. The Supreme Court has, time and again, underscored that the right of appeal is a statutory creation, and its exercise must conform strictly to the statutory framework.

9. The most compelling argument advanced by the learned counsel for the respondent pertains to the binding effect of the ratio *decidendi* laid down in 2013 MLD 1290, wherein this very Court adjudicated upon an analogous factual and legal matrix. In that case, the respondent-purchaser had acquired property from an entity owned by a narcotics convict, and although the prosecution invoked Sections 31 and 35 of the PSA, 1977, no notice under Section 31 was issued to the purchaser, who had registered title. This omission was deemed fatal to forfeiture proceedings. The Court categorically held that the issuance of notice under Section 31 to the actual title holder was not merely a procedural formality but a substantive safeguard mandated by law. It further held that the Special Judge must possess "reasonable suspicion" grounded in material facts before issuing such notice, and a mechanical or indiscriminate issuance of notices undermines both procedural fairness and substantive due process. The factual matrix in the present appeal is virtually indistinguishable. The respondent acquired the property in 1991, well prior to the issuance of the freezing order in 1995 and the notice dated 10.10.1996. Importantly, the respondent's name was not included in the statutory notice under Section 31. The appellant, despite being granted repeated opportunities by this Court through orders dated 09.05.2023, 17.08.2023, 26.04.2024, and 08.05.2024, failed to either distinguish the ratio in Dr. Abdul Hakim Abrash or to justify its inapplicability. The doctrine of *stare decisis* thus compels this Court to follow the binding principle unless distinguishable

on facts or overruled by a superior forum. A comparative assessment of the present facts with the precedent in Dr. Abdul Hakim Abrash (2013 MLD 1290) reveals a congruence too stark to be ignored. In both matters, the purchasers acquired immovable property from entities allegedly associated with a narcotics trafficker. In Abrash, the transaction took place in 1993 and the notice under Section 31 was issued in 1996, without naming the registered purchaser. The Court held that such omission nullified the effect of the notice vis-à-vis the bona fide owner and precluded the State from enforcing forfeiture absent actual or constructive notice. In the instant case, Respondent No.1, Syed Aitemad Hussain Zaidi, established acquisition of the subject flat in 1991. The initial payment toward the property dates back to 20.12.1987, made in the name of his son. A “No Dues Certificate” was acquired in August 1990, and the transaction was concluded prior to any legal proceedings under the PSA, 1977. The freezing order came into effect on 19.01.1995, while the statutory notice under Section 31 was issued much later on 10.10.1996, and critically, the respondent's name does not appear therein.

10. The learned Special Judge, in the impugned order, explicitly acknowledged this defect and recorded a pertinent observation that: “It is yet to be decided at the time of trial whether Syed Aitemad Hussain Zaidi had any nexus with Anwar Khattak, except for being the purchaser of the said flat. No evidence has been recorded so far in this regard; therefore, this property cannot be included under the notice dated 10.10.1996.” This finding is consistent with both the reasoning and outcome in Abrash, where the absence of nexus and procedural non-compliance led to the reversal of forfeiture. Despite ample opportunity granted through multiple judicial directives to rebut or distinguish the precedent, the appellant has neither addressed nor contested the applicability of the controlling ratio. This silence amounts to an implicit admission of the legal position and confirms that the impugned order is judicially unassailable.

11. The respondent has, through documentary evidence, affirmatively established his status as a bona fide purchaser for value. Not only did the acquisition predate the initiation of forfeiture proceedings, but it also occurred years before any judicial findings against Muhammad Anwar

Khattak. The payment chronology, "No Dues Certificate," and subsequent transfer through regular conveyance instruments demonstrate compliance with legal requirements and contractual norms. No rebuttal to this chain of title has been brought on record by the appellant. The burden to establish that the subject property was acquired through proceeds of crime or held on behalf of the drug trafficker squarely lay on the prosecution. It is a settled proposition of criminal jurisprudence that suspicion, however grave, cannot substitute for proof. In forfeiture matters, the evidentiary threshold is heightened where third-party rights of bona fide purchasers are concerned. The prosecution has failed to discharge this burden. The learned trial Court, in exercising its discretion to release the property, was mindful of this evidentiary deficit and rightly declined to perpetuate a freezing order that lacked a valid legal foundation. Courts must be cautious in extending the net of forfeiture where no traceable linkage, either in person or transaction, is established between the accused and the registered property holder.

12. While the appellant has argued that alienation of the property following the freezing order violates Section 35 of the PSA, 1977 and renders such transactions void, this contention has been prudently deferred by the trial court for adjudication at the stage of trial. The impugned order records the following: "As far as the contention of learned SPP that the property in question has been sold out through attorney, suffice to say that up till now there is no record of such sale except mere words, and it is to be established too at the time of trial by ANF." This statement reflects judicial restraint and procedural fairness, as the issue of the validity of subsequent conveyances is fact-intensive and cannot be conclusively decided in a collateral interlocutory proceeding. The appeal at hand is confined to the correctness of the release order vis-à-vis Respondent No.1 and not the legality of downstream transfers. The Court has not foreclosed the right of the ANF to pursue this claim during trial, thereby preserving prosecutorial remedies within lawful bounds. Therefore, the impugned order merely restores the respondent's property from an irregular freezing action while maintaining the ANF's right to raise claims at the appropriate stage of trial, a balance of competing interests that reflects sound judicial reasoning.



13. Upon meticulous appraisal of the factual matrix, rival contentions, and the applicable statutory framework, this Court is constrained to conclude that the present Special Criminal Appeal is incompetent and liable to be dismissed on dual counts: firstly, it is manifestly barred by limitation, the appellant having failed to file the appeal within the statutory period prescribed under Section 43 of the Prevention of Smuggling Act, 1977, and having further failed to seek or obtain condonation thereof; and secondly, it is devoid of merit, as the legal infirmities in the freezing order, particularly the failure to serve notice upon the bona fide title holder, stand conclusively resolved by binding precedent in State/ANF through Deputy Director v. Dr. Abdul Hakim Abrash and another (2013 MLD 1290), which squarely governs the present dispute. The impugned order dated 07.02.2018 passed by the learned Special Judge, CNS-II, Karachi, reflects a well-reasoned exercise of judicial discretion, firmly rooted in settled principles of law and procedural fairness. The appellant has failed to raise any legally sustainable ground to warrant interference by this Court. Accordingly, for the foregoing reasons, the instant Criminal Appeal, along with all pending interlocutory applications, is hereby dismissed. The impugned order is affirmed in its entirety. Let a copy of this judgment be transmitted to the learned trial Court for compliance and necessary action.

**J U D G E**