

HONG KONG / JUDGMENT

HKSAR v. HASSAN MD

[2026] HKCA 946**COURT**

Court of Appeal

DECIDED

6 May 2026

CASE / FILE NUMBER

CACC262/2024

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

CACC 262/2024, [2026] HKCA 946 On Appeal From [2024] HKDC 2024 in the high court of the hong kong special administrative region court of appeal criminal appeal no 262 of 2024 (on appeal from DCCC NO 1034 of 2023) BETWEEN HKSAR Respondent and Hassan Md Applicant Before: Hon Macrae VP in Court Date of Hearing: 6 May 2026 Date of Decision: 6 May 2026 D E C I S I O N

The applicant stood trial before HH Judge Eddie Yip (“the judge”) in the District Court on a charge of trafficking in dangerous drugs, contrary to sections 4(1)(a) and (3) of the Dangerous Drugs Ordinance, Cap 134. He was convicted, upon a reversal of his plea from ‘not guilty’ to ‘guilty’ during the course of the trial, and, on 28 November 2024, sentenced to 70 months’ imprisonment. Having filed, on 10 December 2024, a Form XI Notice of application for leave to appeal against sentence, he now applies for bail pending appeal before me. The application is opposed by Mr Cheung for the respondent in relation to both the merits and the time grounds.

Facts of the case On 27 April 2023, at 7:50 pm, the applicant was seen walking towards Flat A, 5/F, Nos 5-5A Humphreys Avenue, Tsim Sha Tsui, Kowloon (“the flat”) and, after taking out a chain of keys from his trouser pocket, opening the door and entering the flat. On the following day, at 7:26 pm, he was seen attending the flat again. Upon being intercepted and searched by the police, there was found in his trouser pocket a chain of four keys including one to the flat, a key to Room 4 within the flat, a transparent re-sealable plastic bag and cash of HK\$120. Using the two keys which were connected to the flat, the police gained entry into Room 4 and seized 29 plastic bags inside, in which were found four different types of dangerous drugs, namely (based on their pure narcotic content): 9.55 grammes (6.61 + 0.93 + 2.01) of methamphetamine hydrochloride (commonly known as “Ice”); 5.2 grammes (4.18 + 1.02) of 3,4-methylenedioxymethamphetamine; 0.06 grammes (0.03 + 0.03) of ketamine; and 1.46 grammes of cocaine. The police also found inside Room 4 two other re-sealable plastic bags containing a total of 27 empty re-sealable plastic bags, a digital scale, two metal spoons, one electronic mixer and one pair of scissors. The applicant was 43 years of age at the time of sentence and a Form 8 recognizance holder. When passing sentence, the judge adopted a starting point of 6 years and 3 months’ imprisonment for the charge, which he enhanced by 3 months’ imprisonment for the different assortment of drugs and another 6 months’ imprisonment for the

applicant's non-refoulement status, resulting in the enhanced starting point of 7 years' imprisonment. After giving him a discount of 16.7% for his late change of plea tendered during the prosecution case, the judge passed a sentence of 70 months' imprisonment. Consideration The sentencing guidelines for "Ice" were recently revised by the Court of Appeal, although in respect of trafficking in large and very large quantities of the narcotic only. For smaller quantities below 600 g, the sentencing guidelines in HKSAR v Tam Yi Chun remain applicable. In particular, the starting point after trial for a quantity of up to 10 grammes of narcotic remains at between 3 and 7 years' imprisonment, bearing in mind, however, that it is within the discretion of the sentencing judge to adopt a starting point below 3 years for trafficking in very small quantities of "Ice", such as 1 gramme or below: see HKSAR v Yeung Kam Chun. On an arithmetical basis, the equivalent quantities that would attract a starting point between 6 and 7 years' imprisonment are 7.75 to 10 g of "Ice". A starting point of 6 years and 3 months' imprisonment would therefore be appropriate for trafficking in 8.3125 g of "Ice", if one were to sentence arithmetically on quantity alone. It follows that even if the same basic starting point adopted by the judge was only for trafficking in 9.55 grammes of "Ice", it could not reasonably be criticised, assuming the applicant was simply a store-keeper, which on the facts was perhaps a generous finding. For the purpose of the present application, it is not necessary for me to come to an arithmetical result in respect of all quantities of drugs trafficked by the applicant. Suffice it to say, a basic starting point of just under 7 years' imprisonment would be appropriate for the "Ice" alone, even before taking into account the smaller quantities of the other three drugs. Given that a lower starting point was taken by the judge, no valid criticism can be levelled against the enhancement of 3 months for the different assortment of dangerous drugs, or for the further enhancement of 6 months for the applicant's Form 8 status. It was observed by the Court in HKSAR v Rivillas Marin Luis Fernando, after referring to HKSAR v Shah Syed Arif, that: "...committing an offence of such gravity [i.e. trafficking in dangerous drugs] is a serious breach of the trust and privilege extended to those whose claims for asylum are being processed." It has been well-established by the Court in HKSAR v Ngo Van Nam that for a plea tendered during the currency of the trial, the appropriate discount will be less than 20%. In the circumstances of the applicant, I do not see a reasonable argument can be made against the judge's discount of 16.7%. There is nothing which can reasonably suggest that the applicant has received a manifestly excessive sentence. The applicant has failed to demonstrate any reasonably arguable appeal, let alone one with a good prospect of success. Accordingly, I refuse to grant him bail pending his appeal. I should make clear that when the applicant appeared before me this morning, he took issue with the fact that he was appealing against sentence and said that his intention was to appeal against conviction, because he now had some evidence in his favour. I pointed out that (i) he had pleaded guilty before the judge after the trial had begun as a contested trial and when he was represented by counsel; (ii) he filed a notice of application for leave to appeal against both conviction and sentence but abandoned his appeal against conviction on 19 March 2025; and (iii) he filed a submission to the Court on 2 April 2025 in support of his appeal against sentence, stating the following: "My point being – I was not told that this was the case! As I have already stated, if I had known this I would (have) not gone to trial and as I was advised to by my legal team. I would (have) simply pled guilty to ensure I received the full 1/3 cut from my

sentence.” The applicant says all of these three events were a mistake or the result of being wrongly advised. He says he is illiterate; however, I note that he signed his confirmation at all three events or stages, including a written confirmation of his decision to plead guilty at the trial. I do not think there is any credible evidence whatsoever that he was either wrongly advised by his lawyers or that he never intended to plead guilty. Needless to say, Mr Cheung opposes any application to allow a reversal of plea or to treat the abandonment of his appeal against conviction as a nullity. I find no basis for obtaining another hearing of any application to treat the abandonment of his appeal against conviction as a nullity. Given that I have had to consider the reasonableness of the application for leave to appeal against sentence at the hearing of this application for bail pending appeal, I will indicate that I am refusing leave to appeal so that further time is not engaged and the matter is not delayed. That means that the applicant may renew his application for leave to appeal to the Court of Appeal if he wishes to do so, but he should also be warned that the Court of Appeal has the power to make an order for the loss of any time which the applicant has spent in custody pending his appeal, if it were to come to the conclusion that that there was no justification for renewing the application. (Andrew Macrae) Vice President Mr Ivan Cheung ADPP, of the Department of Justice, for the Respondent The Applicant appeared in person

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=180348

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-hassan-md-2026>

Prepared on 26 October 2026 · Esheria