

HONG KONG / JUDGMENT

HKSAR v. SOHAIB MOHAMMAD

[2026] HKCFI 1676**COURT**

Court of First Instance

DECIDED

23 March 2026

CASE / FILE NUMBER

HCCC254/2025

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bjbj HCCC 254/2025

**[2026] HKCFI 1676 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE CRIMINAL CASE NO 254 OF 2025**-----
BETWEEN HKSAR and SOHAIB MOHAMMAD Defendant
-----Before: Hon Anna Lai J in Court Date of Hearing and Ruling: 23 December 2025 Date of Handing
Down Reasons for Ruling on Forfeiture: 23 March 2026 REASONS FOR RULING ON FORFEITURE

Introduction

The defendant pleaded guilty to one charge of trafficking in dangerous drugs contrary to section 4(1)(a) and (3) of the Dangerous Drugs Ordinance, Cap. 134 (), and was sentenced to 7 years imprisonment by me on 4 December 2025. The prosecution applied for forfeiture of, inter alia, a Redmi mobile phone, 2 SIM cards and cash of HK\$3,630 (Exhibits P37-P40) pursuant to section 56(1) of the DDO. The defendant opposed the application on the basis that those were his personal items. The defendant was unrepresented and appeared in person at the hearing of the forfeiture application on 23 December 2025. Upon hearing the evidence and submissions of parties. I ordered P37-P40 be forfeited to the Government. I now give my reasons. The facts

According to the Summary of Facts admitted by the defendant, on 5 December 2023 he arrived in Hong Kong from Delhi, India by flight. He was carrying a backpack and a check-in suitcase. Upon customs clearance, the defendant opened the suitcase with a key he possessed. A total of 6 packets containing 3,372.3 grammes of cannabis resin, and one packet containing 165 grammes of a solid containing 58.4 grammes of cocaine were found in a false compartment at the bottom of the suitcase. The estimated retail value of the drugs seized was over HK\$299,000. Exhibits P37-P40 were also seized from the defendant. Examination of the defendant s mobile phone (P37) revealed that it contained photographs of the suitcase, luggage receipt, the defendant s passport

and some immigration documents. The boarding pass showed that he boarded a flight from Delhi to Hong Kong on 4 December 2023, and was scheduled to return on 7 December 2023. The defendant stated under caution in a video-recorded interview that he worked as a fruit seller with monthly income of around 10,000-15,000 rupees. He had no savings and he was not in debt. He brought the suitcase to Hong Kong for Nadeem out of greed for the free trip to Hong Kong. Nadeem arranged for everything including the air ticket, hotel booking, the suitcase and travelling expenses. He came to Hong Kong alone and planned to stay for two to three days. As to the photographs found in his mobile phone, the defendant said he took those photographs and sent them to Nadeem upon Nadeem's request. He communicated with Nadeem via WhatsApp calls only. Mitigation The defendant, now aged 29, was 27 years old at the time of the offence. In mitigation, defence counsel informed the Court that the defendant came from a very poor family in India and he had not received any formal education. He was single and lived together with his mother. He worked as a salesman in India earning around 10,000 Indian rupees (equivalent to HK\$918) a month. He committed the offence out of greed for a free trip to Hong Kong. Legal principles The prosecution's application for forfeiture was made pursuant to section 56(1)(a) and (b) of the DDO which provides:

- (1) A court may (whether or not any person has been convicted of such offence) order to be forfeited to the Government- any money or thing (other than premises, a ship exceeding 250 gross tons, an aircraft or a train) which has been used in the commission of or in connection with; any money or other property received or possessed by any person as the result or product of, an offence under this Ordinance or a drug trafficking offence within the meaning of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405). Under section 56(1), for a court to make a forfeiture order to the Government it must be satisfied that either (a) the money or thing has been used in the commission of or in connection with a drug trafficking offence; or (b) the money or other property was received or possessed by a person as the result or product of a drug trafficking offence. Forfeiture proceedings are civil in nature. In the case of *HKSAR v Chan Chun Hei*, the Court of Appeal laid down the steps to be taken in an application for forfeiture
36. In an application for forfeiture, the first question a court must ask is pursuant to what statutory provision is the application being made? The relevant statutory provision determines the jurisdiction of the court, sets the parameters of the court's power and identifies the matters of which the court must be satisfied in the exercise of its power. The second question the court must ask is on what evidence are the parties relying on in order to satisfy the court that the application should or should not be granted? Furthermore, a forfeiture application must be formally decided on the basis of evidence, and the court should alert an aggrieved party if it has taken a position against them on the available evidence in order to afford them the opportunity to give or call evidence on the issue. However, it would usually be obvious from the evidence in a contested trial, or from the agreed facts and other information presented to the court upon the hearing of a plea of guilty, as to what is the basis of an application for forfeiture, but an aggrieved party should be given the opportunity to address the court on the matter.

37. In considering an application pursuant to subsection 56(1), a court has discretion as to whether or not to make an order for the property to be forfeited to the Government. Where the prosecution has shown on a balance of probabilities that there is a prima facie case that the property comes within one or both of the limbs under section 56(1), then the burden will pass on to the defendant to show otherwise. If the defendant has not discharged this burden, an order will be made for the property to be forfeited. If, however, the prosecution has not shown on a balance of probabilities that there is a prima facie case for the forfeiture order, the property should be returned to the defendant if it belongs or should be given to him and there is no other reason not to do so. The Court in *HKSAR v Ngoma Juma Shabani* pointed out that it was not normally necessary for a judge to identify which aspect or permutation of section 56(1) of the DDO was engaged when deciding whether to make an order of forfeiture. The various alternatives were set s.56(1)(a) would be rendered almost useless Submissions of the prosecution In her written submissions dated 8 December 2025, Miss Mok for the prosecution submitted that there was a prima facie case that Exhibits P37-P40 were liable to forfeiture within either or both limbs under section 56(1), DDO. In respect of the mobile phone and the 2 SIM cards (P37-P39), Miss Mok submitted that 2 photographs of the defendant with the suitcase were found in the Snapchat application of the mobile phone. The defendant admitted that photographs of his passport and the immigration documents were taken upon Nadeem s request, and he sent those photographs to Nadeem via WhatsApp. The defendant also admitted that he communicated with Nadeem via WhatsApp calls which must inevitably be made on his mobile phone. Miss Mok argued that the above matters demonstrated that the defendant had used his mobile phone to contact and to report to Nadeem about the status and progress of the dangerous drug trafficking operation. Hence the mobile phone (and the SIM cards contained therein) had been used in the commission of or in connection with the drug trafficking offence. In respect of the cash of HK\$3,630 (P40), Miss Mok submitted that the defendant was a person of limited means, and it would be unreasonable for him to have HK\$3,630 savings. The defendant carried those cash with him when he came to Hong Kong. The defendant stated under caution that Nadeem arranged for the travelling expenses. He worked as a fruit seller with monthly income of about 10,000-15,000 Rupee. In mitigation, defence counsel also confirmed that he worked as a salesperson earning approximately 10,000 rupees (equivalent to HK\$918) per month. It could be reasonably inferred that the money was provided to the defendant to cover his expenses in Hong Kong. Clearly the money was used in connection with, and/or received or possessed by the defendant as a result of the drug trafficking offence. Submissions of the defendant Taking into account the matters stated by Miss Mok in her written submissions, the Summary of Facts admitted by the defendant and his personal background as revealed in mitigation, I was satisfied that the prosecution had shown on a balance of probabilities that there was a prima facie case that Exhibits P37-P40 came within one or both limbs under section 56(1), DDO. Then the burden would pass onto the defendant to show otherwise. The defendant chose to give evidence without calling any other witnesses. In his evidence-in-chief, the defendant stated that Nadeem had only provided him with the air tickets. The cash was his own hard-working money. He exchanged the

money into Hong Kong currency. He agreed that his mobile had been used in communication with Nadeem for drug trafficking activities. The defendant said before coming to Hong Kong, he worked as a salesperson earning 10,000-15,000 rupees a month. The defendant lived with his mother and he was the only person who supported her. He supported his mother with 5,000 to 6,000 rupees a month, and he spent around 4,000 to 5,000 rupees himself. The defendant said he had already pleaded guilty and got the imprisonment. The money and the mobile phone belonged to him and should be returned to him. In cross-examination, the defendant said he had sent a selfie of himself in the flight to Nadeem, the person who asked him to bring the suitcase of drugs to Hong Kong. He communicated with Nadeem by voice messages over the WhatsApp. Even though Nadeem provided the travelling expenses, Nadeem did not provide him with any cash. The defendant said he would save around 5,000 to 6,000 rupees a month. It took around 8 to 9 months to save 43,000 Indian rupees. The money that he had brought to Hong Kong only consisted of part of his own savings. He intended to use the money for himself. He planned to use the money to buy gifts for he himself and his family, and to buy food. According to the Summary of Facts, the defendant stated in his video-recorded interview that he had no savings. When being asked about this matter, the defendant at the time his answer was, I have no money at this moment. but the interpreter had translated his answer wrongly. The defendant did not raise any dispute about this matter when he agreed to the contents of the Summary of Facts in the Magistrates Court in the High Court. He said maybe the interpreters missed or forgot to explain. In re-examination, the defendant repeated that the money belonged to him, and he had no supporting document to prove this. He had already been sentenced to imprisonment for the offence, and the personal items should be returned to him. Consideration As mentioned above, on the information before me I was satisfied that the prosecution had shown on a balance of probabilities there was a prima facie case that Exhibits P37-P40 were liable to seizure. In his evidence the defendant admitted that he had used the mobile phone to communicate with the drug trafficker Nadeem, to take photographs of the suitcase, the travelling and immigration documents in connection with his trip to Hong Kong. He also sent a photograph of himself in the flight to Nadeem. Clearly the mobile phone (and its SIM cards) had been used in connection with the trafficking activities in the present case. The defendant stated in his video-recorded interview to the police that he was a salesman earning around 10,000 to 15,000 rupees per month. The interview was given with the assistance of an English and Hindi interpreter. This matter was also mentioned in the Summary of Facts to which he personally agreed in the Eastern Magistrates Court on 31 July 2025, and before me on 4 December 2025. On each occasion, the Summary of Facts were read to him through an English and Hindi interpreter. The defendant personally agreed to the facts without dispute. This was in contradiction with his evidence in court that the money was part of his savings. I have no hesitation to reject the defendant's allegation that the interpreter on each occasion had made a wrong translation or missed something in the translation. The amount of cash found on his person was equivalent to 4 months of his salary. It was quite a substantial sum given that the defendant was a person of little means. In any event, it was clear from the defendant's evidence that the money intended to be spent

Conclusion

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BETWEEN HKSAR SOHAIB MOHAMMAD Defendant

Before Hon Anna Lai J in Court Date of Hearing and

Ruling

23 December 2025 Date of Handing Down Reasons for Ruling on Forfeiture 23 March 2026
REASONS FOR RULING ON FOR EITURE Times New Roman

Introduction

"Arial The defendant pleaded guilty to one charge of trafficking in dangerous drug contrary to
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imprisonment by me on 4 December 2025 "Arial Des Voeux Chambers Skeleton Title <?xml
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