IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 23

Originating Summons No 1378 of 2018

Between

Public Prosecutor

… *Plaintiff*

And

Abdul Kahar bin Othman

… *Defendant*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Confiscation and forfeiture]

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v
Abdul Kahar bin Othman

[2021] SGHC 23

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Vincent Hoong J
17 February 2020

2 February 2021

Vincent Hoong J:

1 This concerns Originating Summons No 1378 of 2018 (the "**OS**"). In the OS, the Public Prosecutor (the "**PP**") applied for a confiscation order and various other related orders against Abdul Kahar bin Othman (the "**Defendant**") under ss 4, 7 and 10 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("**CDSA**"). The said orders had to do with the benefits that the Defendant had allegedly derived from his drug dealing activities. The Defendant resisted the OS. After hearing parties on 17 February 2020 (the "**Hearing**"), I allowed the PP's application. In particular, I granted the following:

(a) A confiscation order for the amount of $167,429.51, being the value of the benefits derived by the Defendant from drug trafficking in accordance with s 4 of the CDSA (the "**Confiscation Order**");

(b) An order that the amount to be recovered from the Defendant under the Confiscation Order shall be the sum of $167,429.51.

(c) An order that the defendant shall pay the sum of $167,429.51 to the State.

(d) An order that the following realisable property be realised and the proceeds of the realisation be applied on the Defendant's behalf towards the satisfaction of the Confiscation Order:

(i) Cash of $70,295.55 that was seized from the Defendant.

(ii) A sum of $65,551.47 in a DBS/POSB bank account in the name of the Defendant (the "**DBS/POSB Account**").

(iii) A sum of $31,582.49 in an OCBC bank account in the name of the Defendant (the "**OCBC Account**").

(e) A certificate pursuant to s 10(2) of the CDSA (the "**Certificate**") stating that:

(i) the Confiscation Order was made against the Defendant in respect of the benefits derived by him from drug trafficking, which benefits were assessed to be $167,429.51;

(ii) the amount to be recovered from the Defendant was $167,429.51; and

(iii) the amount that might be realised at the date of the Confiscation Order was $167,429.51.

(f) That there be no order as to costs.

The orders set out at sub-paragraphs (b) to (f) above are referred to as the "**Remaining Orders**".

2 On 23 September 2020, the Defendant applied for leave to file an appeal against my above decision out of time. This leave application was granted by the Court of Appeal on 20 October 2020. On 5 November 2020, the Defendant filed his Notice of Appeal. I thus set out the reasons for my decision below.

Background and parties' arguments in the OS

3 On 6 July 2010, the Defendant was arrested by officers from the Central Narcotics Bureau and found with a packet containing diamorphine. A subsequent search of his home resulted in the recovery of another two packets and a sachet that also contained diamorphine. Two charges were eventually brought against the Defendant under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("**MDA**") for trafficking in diamorphine. On 27 August 2013, the Defendant was convicted by the High Court of both charges. On 24 October 2013, the High Court judge (the "**Judge**") also found that the Defendant was a courier for the purpose of s 33B(2)(*a*) of the MDA. A criminal reference was then filed to the Court of Appeal. In its decision, the Court of Appeal provided guidance on the meaning of a courier for the purpose of the aforementioned provision and set aside the Judge's finding. The case concerning the Defendant was then remitted to the Judge. On 4 February 2015, the Judge decided that the Defendant was not a courier for the purpose of s 33B(2)(*a*) of the MDA and passed the death sentence on the Defendant. The Defendant appealed against his conviction and sentence. The appeal was dismissed by the Court of Appeal. A criminal motion was later filed to reopen

the Defendant's appeal, but it was also dismissed by the Court of Appeal on 16 August 2018.

4 On 13 November 2018, after the abovementioned criminal proceedings had finally concluded, the PP filed the present OS. The parties' arguments are discussed in greater detail below along with the relevant statutory provisions. I will only briefly summarise them here. In the OS, the PP sought, in substance, the same orders which I eventually granted (as set out at [1(a)]–[1(e)] above). The PP's two main arguments were as follows:

(a) Between 2005 and 2010, the Defendant had accumulated wealth of $360,794.08, for which only $193,364.57 came from known sources of income. Under s 4(4) of the CDSA, the remaining $167,429.51 was presumed to be benefits derived by the Defendant from his drug dealing activities. The Defendant had, however, failed to satisfactorily explain his holding of this sum of $167,429.51. As such, a confiscation order under s 4 of the CDSA ought to be made against the Defendant for the amount of $167,429.51.

(b) The Defendant had "realisable property", as defined in s 2(1) of the CDSA, of $237,647.77. The court should hence order that the amount of $167,429.51 be recovered from the Defendant and that certain specified "realisable property" be applied to satisfy the confiscation order sought.

5 On the other hand, the Defendant contested the PP's submission as regards his net worth and the property that could be "realised" for the purpose of satisfying any confiscation order against him. In particular, the Defendant claimed that, contrary to the PP's submission, a sum of $60,000 held in his

mother's bank account belonged to her rather than him. More generally, he argued that his income was greater than what the PP had indicated and that he had fully explained the wealth he accumulated between 2005 and 2010. The Defendant hence took the position that the court should refuse to make the confiscation order and the other orders sought by the PP.

My decision

6 I first discuss my reasons for making the Confiscation Order, followed by my reasons for making the Remaining Orders.

The Confiscation Order

7 Section 4(1) of the CDSA provides:

> **Confiscation orders**
>
> 4.—(1) Subject to section 27, where a defendant is convicted of one or more drug dealing offences, the court shall, on the application of the Public Prosecutor, make a confiscation order against the defendant in respect of benefits derived by him from drug dealing if the court is satisfied that such benefits have been so derived.

8 Pursuant to the above provision, the court shall make a confiscation order on the application of the PP where:

(a) the defendant has been "convicted of one or more drug dealing offences"; and

(b) the court is satisfied that the benefits (in respect of which the confiscation order is to be made) were derived from drug dealing.

9 As regards the first requirement, s 2 of the CDSA defines a "drug dealing offence" as, *inter alia*, any offence specified in the First Schedule of the CDSA.

This includes an offence of trafficking in a controlled drug under s 5 of the MDA. As stated earlier, the Defendant was convicted of two charges of trafficking in diamorphine under s 5(1)(*a*) read with s 5(2) of the MDA. The first requirement is therefore satisfied.

10 Turning to the second requirement, s 4(4) of the CDSA provides for the following presumption:

> (4) Subject to section 28, for the purposes of this Act, *a person who holds or has at any time* (whether before or after 30th November 1993) *held any property or any interest therein disproportionate to his known sources of income, the holding of which cannot be explained to the satisfaction of the court, shall, until the contrary is proved, be presumed to have derived benefits from drug dealing.*
>
> [emphasis added]

11 Section 7(1) of the CDSA further sets out how the "benefits derived…from drug dealing" are to be assessed:

> **Assessing benefits of drug dealing**
>
> **7.**—(1) Subject to section 28, for the purposes of this Act —
>
> (a) the *benefits derived by any person from drug dealing shall be any property or interest therein* (including income accruing from such property or interest) *held by the person at any time*, whether before or after 30th November 1993, being property or interest *disproportionate to his known sources of income and the holding of which cannot be explained to the satisfaction of the court; and*
>
> (b) the *value* of the benefits derived by him from drug dealing *shall be the aggregate* of the values of the properties and interests therein referred to in paragraph (a).
>
> [emphasis added]

12 To support its argument as set out at [4(a)] above, the PP relied upon the affidavit of Senior Staff Sergeant Lim Mei Wah ("**SSSGT Lim**"). SSSGT Lim's

affidavit exhibited a statement relevant to (a) the determination of whether benefits had been derived by the Defendant from drug dealing; and (b) the assessment of the value of those benefits ("**Statement**") (see s 9 of the CDSA).

13 In the Statement, SSSGT Lim stated that she had conducted investigations into the Defendant's financial affairs between 2005 and 2010. She also produced a concealed income analysis report as part of the Statement. The Statement made the following findings:

(a) The Defendant's net worth as at 1 March 2005 was $10,568.55, consisting of $3,074.63 in cash and $7,493.92 in two bank accounts. The aforementioned date was the day that the Defendant was released after serving 10 years of preventive detention.

(b) Over five years later, on 6 July 2010 (*ie,* the date of the Defendant's arrest), the Defendant's net worth was $278,547.77. This comprised the following:

(i) $70,296.78 in cash that was seized from the Defendant at the time of his arrest.

(ii) $107,350.99 in various bank accounts belonging to the Defendant, including the DBS/POSB Account and the OCBC Account.

(iii) A sum of $60,000, which had been deposited by the Defendant into a bank account belonging to his mother ("**Mother**").

(iv) A car purchased by the Defendant worth $40,900.

(c) Between 1 March 2005 and 6 July 2010 (the "**relevant period**"), the Defendant's total expenditure was $92,814.86. This was calculated by adding up various expenses, including the Defendant's meal and transport costs, car insurance payments and allowances that he had given to the Mother. The figures for such expenses were taken from, *inter alia,* the Defendant's own statements to the police as well as documentary records, where available.

(d) During the relevant period, the Defendant's increase in net worth was therefore $360,794.08 (*ie,* the sum of $278,547.77 and $92,814.86, less $10,568.55).

(e) The Defendant had, however, received only $193,364.57 from known sources of income during the relevant period. This comprised (i) income from the Defendant's work "doing upholstery and delivery"; (ii) interest earned on his bank accounts; (iii) government subsidies; (iv) income from government shares; and (v) lottery winnings.

(f) Based on the foregoing, it was calculated that as of 6 July 2010, the Defendant held property and interest in the amount of $167,429.51 disproportionate to his known sources of income (*ie,* $360,794.08 less $193,364.57).

The PP contended that the Defendant could not explain his holding of the sum of $167,429.51 to the satisfaction of the court. It was hence argued that pursuant to ss 4(4) and 7(1) of the CDSA, the Defendant was presumed to have derived $167,429.51 from drug dealing.

14 Contrary to the PP's claim that his net worth as at 6 July 2010 was $278,547.77, the Defendant claimed that the sum of $60,000 held in the

Mother's bank account was hers, not his (see [13(b)(iii)] above). Furthermore, he said that he had earned more income during the relevant period than what SSSGT Lim had found. Curiously, the Defendant insisted that he had earned exactly "$360[,]794.08 from 1 March 2005 to 6 July 2010". This is even though, as mentioned at [13(d)] above, the PP had determined this figure of $360,794.08 to represent the *increase* in the Defendant's net worth during the relevant period. This increase was based on the PP's calculation of the Defendant's net worth as at 6 July 2010, which *included* the $60,000 in the Mother's bank account that the Defendant said was not even his (or earned by him) in the first place.

15 To support his position as set out above, the Defendant claimed, *inter alia,* as follows:

(a) He had invested "$5000 – $10000" in his brother's company and had earned returns of "$6000 – $20000 from [his] investments". His earnings could be up to "$15000" especially during festive periods.

(b) He had a side-job sewing cushion covers, skirting sofas and curtains. He earned "$250 for cushion covers…in 2 days", "$200 for skirting covers…in 1 day" and "$300 for…curtains in 2 days".

(c) He was also a delivery driver. He charged customers "$50 each day" and made "8 trips in 1 month" such that he earned "$400 [per month]". This enabled him to earn $19,200 over four years.

(d) He had started his own furniture business.

(e) He won prize money of $200 and $4000 from the lottery.

(f) All of the monies coming from his employment in his brother's company, his side-jobs, his own business and his lottery winnings were

"cash-in-hand". There were "no invoice records as it was an old-fashioned style of business".

(g) He only earned $8,000 from selling drugs on 16 occasions over a period of two months. As such, the benefits he derived from drug dealing only amounted to $8,000.

16 In my judgment, the analysis by SSSGT Lim in the Statement, as set out at [13] above, was generally sound. In particular, I accepted that the $60,000 in the Mother's bank account (referred to at [13(b)(iii)] above) had indeed come from the Defendant such that it constituted property "held by [him] at any time" (see ss 4(4) and 7(1) of the CDSA). This meant that the Defendant had to explain to this court's satisfaction how he had earned the said sum. In this regard, I referred to the Mother's statement to the police (dated 6 July 2010). In that statement, the Mother plainly stated that out of the $104,057.12 in her bank account, $60,000 belonged to the Defendant whilst the remainder was hers. She specifically mentioned that the Defendant had placed $60,000 into her bank account through the last four transactions recorded in her bank book at the time. These transactions were:

(a) a deposit of $20,000 on 11 February 2010;

(b) a deposit of $10,000 on 25 March 2010;

(c) a deposit of $10,000 on 3 May 2010; and

(d) a deposit of $20,000 on 18 June 2010.

17 The Defendant also admitted in his first statement to the police (dated 12 July 2010) that "[as regards] the money inside [his] mother bank account[,] only the last four transaction…was [his] and it was derived from [his] illegal

money lending business however the remaining money was [his] mother life saving". These statements by the Mother and the Defendant strongly pointed to the conclusion that the $60,000 in the Mother's bank account genuinely came from the Defendant.

18 Notably, the Defendant retracted his admission in his later statement to the police (dated 22 September 2011). In that statement, he claimed instead that all the money in the Mother's bank account belonged to her and had been given to her by his siblings. At the Hearing, the Defendant maintained that the $60,000 belonged to the Mother. He also asserted that one of his statements (presumably the one dated 12 July 2010) had been inaccurately translated by the interpreter. In my view, however, the Defendant's about-turn was quite clearly an afterthought. It came across as a contrived attempt to avoid having to explain his past holding of the sum of $60,000 and to allow his Mother to benefit from the same instead. I thus rejected the Defendant's position as regards this sum of monies.

19 More generally, I also found the Defendant's attempt to explain his other alleged sources of income (as set out at [15] above) to be unsatisfactory. To begin with, the Defendant's allegation that he had earned returns of "$6000 – $20000" on his investment of "$5000 – $10000" in his brother's company was difficult to believe. The higher end of his estimate indicated he would have earned an incredible 100% return on investment. Yet, the Defendant offered hardly any details as to the exact nature of this investment. As far as his side-jobs sewing cushion covers, skirting sofas and curtains were concerned, the Defendant only provided his alleged daily earnings without any indication of the total amount he received. Further, despite stating that he had started his own furniture business, the Defendant similarly gave no details as to how much he

had earned from this business. Importantly, *none* of the Defendant's allegations as to his sources of income were supported by any documents/records at all.

20 In the circumstances, the Defendant fell considerably short of explaining to this court's satisfaction his holding of the amount of $167,429.51, which was disproportionate to his known sources of income. I thus held that pursuant to s 4(4) of the CDSA, the Defendant was presumed to have derived benefits from drug dealing and had failed to prove the contrary. I assessed the said benefits at $167,429.51 in accordance with s 7(1) of the CDSA. I hence decided to make the Confiscation Order for that amount against the Defendant under s 4(1) of the CDSA.

The Remaining Orders

21 I turn then to the Remaining Orders set out at [1(b)]–[1(f)] above. They relate, *inter alia,* to the amount to be recovered from the Defendant under the Confiscation Order, the realisation of property to satisfy the said order and the issuance of the Certificate.

22 I begin by setting out the relevant statutory provisions. Under s 2(1) of the CDSA, the definition of "realisable property" comprises the following two categories of property:

(a) "[A]ny property held by the defendant".

(b) "[A]ny property held by a person to whom the defendant has, directly or indirectly, made a gift caught by [the CDSA]".

23 Section 10(1), 10(2) and 10(3) of the CDSA further provide for the amounts to be recovered under a confiscation order made under s 4, as well as

the court's certification of the amount that might be realised at the date of the confiscation order:

> **Amount to be recovered under confiscation order**
>
> 10.—(1) *Subject to subsection (3), the amount to be recovered* from the defendant *under the confiscation order shall be the amount the court assesses to be the value of the benefits derived by the defendant from drug dealing* or from criminal conduct, as the case may be.
>
> (2) *If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made* (whether by an acceptance under section 9 or otherwise), *the court may issue a certificate giving its opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3).*
>
> (3) *If* the court is satisfied that *the amount that might be realised* at the time the confiscation order is made *is less than* the amount the court assesses to be *the value of the benefits derived by the defendant from drug dealing* or from criminal conduct, as the case may be, *the amount to be recovered from the defendant under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.*
>
> [emphasis added]

24 According to the PP, the Defendant's known "realisable property" under s 2(1) of the CDSA amounted to $237,647.77. This comprised the three assets identified at [13(b)(i)]–[13(b)(iii)] above, namely:

(a) $70,296.78 in cash that was seized from the Defendant at the time of his arrest;

(b) $107,350.99 in various bank accounts belonging to the Defendant, including the DBS/POSB Account and the OCBC Account; and

(c) the sum of $60,000 held in the Mother's bank account.

The PP argued that the amount to be recovered from the Defendant under the Confiscation Order should thus be the full amount of the benefits he had derived from drug dealing, being $167,429.51.

25 Given that the property mentioned in [24(a)] and [24(b)] above was held by the Defendant, they clearly fell within the first category of "realisable property" under s 2(1) of the CDSA.

26 As regards the $60,000 in the Mother's bank account, however, the position is less straightforward. Since this sum was not held by the Defendant himself at the time of the Hearing, the PP needed to establish that it fell within the second category of "realisable property" in s 2(1) of the CDSA – *ie,* "any property held by a person to whom the defendant has, directly or indirectly, made a gift caught by [the CDSA]".

27 Section 12(7)(*b*) of the CDSA explains that "a gift...is caught by [the CDSA]" if:

(a) "it was made by the defendant at any time"; *and*

(b) "[it] was a gift of property which is or is part of the benefits derived by the defendant from drug dealing".

28 At the Hearing, the PP argued that the $60,000 in the Mother's bank account had been gifted to her by the Defendant and that this was a gift "caught by the CDSA" under s 12(7)(*b*). However, the PP had failed to establish that the said sum *was or was part of* the "benefits derived by the [D]efendant from drug dealing" as required by the statutory provision.

29 Based on the PP's calculations, the Defendant had received $193,364.57 from known sources of income during the relevant period and his total expenditure was $92,814.86. This meant that the Defendant still had a remainder of $100,549.71 in earnings. That being the case, it could not be assumed, without more, that the $60,000 given to the Mother came from the Defendant's drug dealing activities.

30 More importantly, in the Mother's statement to the police (dated 6 July 2010), she had said that she did not know where the Defendant had obtained the sum of $60,000 from. In the Defendant's statement (dated 12 July 2010), where he admitted that the money came from him, he only mentioned that the sum had been "derived from [his] illegal money lending business" (see [17] above). It suffices to say that the available evidence did *not* sufficiently point to the $60,000 having been benefits derived by the Defendant from his drug dealing activities.

31 I noted that in its written submissions, the PP made an oblique reference to the Court of Appeal's decision in Criminal Appeal No 4 of 2015 (see *Abdul Kahar bin Othman v Public Prosecutor* [2016] SGCA 11). This concerned the Defendant's appeal against his conviction and death sentence (see [3] above). In that decision, the Court of Appeal observed (at [54]) that there was an "uncanny coincidence between [the] period [between February 2010 and early July 2010], when the [Defendant] was peddling drugs…and the inexplicable large sums deposited into his mother's bank account during that same period". Whilst I accepted that this point was relevant to the issue at hand, I did not think that it was in itself sufficient to prove that the $60,000 had been obtained through the Defendant's drug dealing.

32 Relatedly, I also noticed that the PP did not attempt to rely on s 12(7)(*a*) of the CDSA. That section provides, *inter alia,* that a gift is "caught by [the CDSA]" if it was made by the defendant six years before proceedings for a drug dealing offence were instituted against him. As such, I did not find it necessary to reach a view on whether the $60,000 in the Mother's bank account fell within the scope of the said provision.

33 I was hence unpersuaded that the $60,000 in the Mother's bank account was "realisable property" as defined in s 2(1) of the CDSA. Nonetheless, this did not ultimately affect the orders sought by the PP. Despite submitting that the Defendant's "realisable property" included the said sum, the PP confirmed at the Hearing that it was nonetheless not seeking to realise any part of the $60,000 in the Mother's bank account to satisfy the Confiscation Order (see [35] below). As stated earlier (at [24(a)]-[24(b)] and [25] above), the Defendant still had "realisable property" comprising $70,296.78 in cash and $107,350.99 in his bank accounts. These funds totalled $177,647.77, which was in excess of the $167,429.51 I had assessed to be the value of the benefits derived by the Defendant from drug dealing (*ie,* the restriction in s 10(3) of the CDSA did not apply).

34 In the premises, I ordered under s 10(1) of the CDSA that the amount to be recovered from the Defendant under the Confiscation Order was the full value of the benefits of $167,429.51. The Defendant was also ordered to pay the sum of $167,429.51 to the State.

35 I further held that the following realisable property be realised and the proceeds of the realisation be applied on the Defendant's behalf towards the satisfaction of the Confiscation Order (see [1(d)] above):

(a) The cash of $70,295.55 that was seized from the Defendant.

(b) Out of the cash held in various bank accounts belonging to the Defendant:

(i) the sum of $65,551.47 from the DBS/POSB Account; and

(ii) the sum of $31,582.49 from the OCBC Account.

36 Finally, being satisfied as to the matters mentioned in [1(e)(i)]–[1(e)(iii)]above, I also issued the Certificate under s 10(2) of the CDSA. I did not find it appropriate to make any order as to costs.

Vincent Hoong
Judge of the High Court

Adrian Loo and Chan Yi Cheng (Attorney-General's Chambers) for the plaintiff;
The defendant in person.