IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 4114 of 2025

Asraf Ali @ Firoj & Anr.
Vs.
The State of West Bengal

For the Petitioners	:	Mr. Moyukh Mukherjee Ms. Riya Das Mr. Tamal Singha Roy
For the State	:	Mr. Debasish Roy Mr. Joydeep Roy Ms. Afreen Begum
Heard on	:	16.12.2025
Judgment on	:	02.02.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have assailed the order dated 1st September, 2025 passed in NDPS Case no. 41 of 2022 by learned Additional District & Sessions Judge, Barhampur, 2nd court. Petitioners have been arrayed for commission of alleged offences under sections 21(c) /22/25/27A/28/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in Short NDPS Act.) By the impugned order learned court below has accepted supplementary charge-sheet filed by the investigating agency against the petitioners at the stage, when the case was posted for hearing argument.

2. Prosecution case against the petitioners is that acting on a reliable source input, about an illegal narcotics manufacturing unit at Mathurapur, the authority conducted a raid on 1st February 2022 with the assistance of local police and in the presence of public witnesses and gazetted officer. Upon searching the premises, the said authority recovered Heroine (1.7Kg), Alprazolam (2Kg), Sodium Carbonate Anhydrous (10Kg.) huge cash amount and other chemical apparatus used in drug manufacturing and packaging materials and communication devices. After completion of investigation charge sheet was filed on 28.07.2022 under the above mentioned sections of the NDPS Act, Subsequently on 12.8.2025 i.e. after more than 3 years, when the trial is almost on the verge of completion, a supplementary charge sheet has been filed, adding new sections like 68-F(1) and Section 68E of the NDPS Act, alleging some properties as illegally acquired properties and further alleging that the petitioner Asraf Ali has a criminal antecedent and he has allegedly confessed during interrogation that a heroin manufacturing and distribution unit was running by him and he used to export finished product to Bangladesh via Lalgola border. Be it mentioned that the petitioner no. 1 is in custody nearly for four years and petitioner no. 2 is on bail.

3. Being aggrieved by the said proceeding Mr. Mayukh Mukherjee learned counsel appearing on behalf of the petitioner submits that section 173(8) of the Cr.P.C, no doubt allowed further investigation and filing of a supplementary charge sheet. However this is only permissible so long as the investigation is still within a meaningful stage and before the trial is concluded. Filing a supplementary charge sheet at the fag end of the trial especially after conclusion of recording evidence is clear abuse of the process of the Court. Relying upon judgment of ***K. Vadival vs. K. Santhi and other***, **2024 SCC Online SC 2643** he contended that further investigation is permissible only if there is new material but fishing expeditions or speculative roving enquires can not be permitted at the concluding stages of trial. It can not be permitted simply to dig up witness of evidence that the applicant could have produced earlier nor can it be used as a device to cause delay.

4. Petitioner's further contention is that in the instant case the supplementary charge sheet primarily incorporate the property freezing order and associated financial details which are already under challenge before the appropriate Appellate Tribunal. Therefore Initiating criminal proceeding on the same issue by adding the allegation in a supplementary charge sheet is oppressive and constitutes parallel proceeding on identical facts.

5. He further submits that significant number of prosecution witnesses have already turned hostile. The prosecution has submitted supplementary charge sheet with a *malafide* intention to prejudice the petitioner's defence and to protract incarceration. His further contention is that supplementary charge sheet has been submitted under the same sections mentioned in earlier charge-sheet and therefore it does not bring any fresh material, evidence or additional penal provision on record but merely reiterates what had already been formed part of the original charge sheet and therefore such a mechanical filing of supplementary charge sheet without introducing any new fact or development in the investigation, clearly demonstrate that the agency failed to conduct a proper investigation.

6. Mr. Mukherjee further argued that no formal order was passed by the Court for conducting further investigation and no leave was granted for filing supplementary charge sheet. Therefore such a belated and subsequent supplementary charge sheet would serve no legal purpose.

7. Mr. Mukherjee strenuously argued that section 68F (i) read with section 68 (a) to 68(o) have clearly established that the proceedings contemplated under the said provisions are distinct independent and separate from the main criminal proceeding. The statutory scheme is similar to that of the Prevention of Money Laundering Act, wherein provisions such as section 68(7) explicitly clarify that the adjudicatory mechanism under the chapter operates autonomously and does not depend upon the outcome or pendency of the primary criminal case. The legislative intent behind incorporating chapter V-A in the statute is to create a self-contained Code providing a complete procedural frame work for adjudication, conformation, confiscation and related action which is independent from the trial of the predicate offence. As a result the competent authority has no role to play in the conduct, supervision or progression of the criminal trial. Its jurisdiction is confined exclusively to the proceedings envisaged under section 68(a) to 68(o) which are basically civil cum administrative in nature and not dependent on the stages of investigation or trial. Therefore under the statute both proceedings must run parallelly but independently within its own judicial boundaries as prescribed by law.

8. In the instant case after the first charge sheet was submitted the investigating agency did not conduct any further investigation. The trial is almost on the verge of completion. Filing of supplementary charge sheet at this stage is not only irregular but also procedurally imposable, because supplementary charge sheet can be filed only pursuant to a lawful further investigation undertaken with the permission and supervision of the Court which is conspicuously absent in the present case. A *suomoto* case can not be initiated by the investigation agency at the end of the trial in the absence of any specific order passed by the trial Court. Infact an investigation agency has no independent power to revive, reopen or initiate fresh proceeding, once the trial has reached its conclusion, unless the court itself direct further investigation under section 173 (8) of Cr.P.C or order for a de novo trial or retrial or fresh enquiry under its statutory power.

9. Therefore the mere existence of an enabling provision does not dispense with the requirement of obtaining the court's permission especially when the filing occurs after the commencement of trial and after recording of material prosecution evidence.

10. He further submits that the property which has been described as illegally acquired has also got no substance in view of the fact that when the co-accused was granted bail by the Hon'ble Apex court, the said co-accused started depositing substantial amount of money totalling more than rupees 5 crore in two separate accounts maintained with Bandhan Bank. However the investigating agency has failed to disclose or establish the source of the said funds. There is no material on record to demonstrate that this deposit have any nexus either with the alleged offence or with the financial transaction, forming the subject matter of the present case. In the absence of any cogent explanation or supporting evidence, such deposits can not be presumed to be connected with the case nor can they be used to draw any adverse inference against the petitioner. The impugned order also failed to articulate as to why supplementary charge sheet is required to be accepted at this stage and why prosecution could not have included the same earlier. Therefore the order impugned is bad in law and liable to be set aside.

11. Learned counsel appearing on behalf of the State opposed the prayer made by the petitioner and contended that while the charge sheet was filed initially on 28.07.2022, it was filed keeping the provision open to submit supplementary charge sheet. Further contention of the State is that just after release of co accused Marzina Khatun, who is the wife of petitioner no. 1, from the correctional home after obtaining bail form the Apex Court, she started operating two saving bank accounts being account no. 20100008658268 and 20200018012065 form 07.10.2023 to 31.12.2024 and deposited Rs. 2,23,50,000/- (Two Crore Twenty Three Lakh Fifty Thousand) and in other account she deposited Rs. 3,11,03,313/- (Three Crore Eleven Lakh Three Thousand Three Hundred Thirteen). Out of total deposited amount of Rs. 5,34,53,313/- (Five Crore Thirty-four Lakh Fifty-Three Thousand Three Hundred Thirteen) the cash deposited amount stands Rs. 1,35,50,000/- (One Crore Thirty-Five Lakh Fifty Thousand). Further said co-accused Marjina Khatun booked fixed deposit with the Bandhan Bank amounting to Rs. 34,00,000/- (Thirty-Four Lakh). This sought of abnormal financial transaction strikes in the mind of the investigating agency that too just after release from the correctional home and therefore under the order of the competent authority of special task force, West Bengal vide ORG no. 185/25/CRIME/STF/WB, dated 08.02.2025, further investigation of the case was initiated on 09.02.2025.

12. Learned counsel for the state further submits that the financial investigation further reveals illegally acquired property amounting to Rs. 31,31,28,794/-. The FIO submitted freezing order in respect of the illegally acquired property on 11.04.2025 under section 68-F(1) and the said amount was confirmed by the competent Authority on 09.05.2025. After completion of further investigation, the present investigating officer filed supplementary charge sheet which reveals financial irregularities against both the petitioners on 12.08.2025 citing the present investigation officer as the only witness to be examined. His further contention is though prior approval for filing supplementary charge sheet is not required under the law but still they have kept the provision for further investigation open while they filed charge sheet on 28.7.2022. Therefore the acceptance of supplementary charge sheet by the court below is well within the purview of law and since such action does not involve any illegality, it does not call for interference by this court.

13. I have considered submissions made by both the parties

14. Chapter V-A comprising of section 68(A) to 68(Z) was inserted in the Act to prevent drug trafficker from enjoying and making profit form illegally acquired property. Section 68-R gives the competent authority and the Appellant Tribunal the powers akin to a civil court and such type of forfeiture is considered as regularity measure intended to divest ownership of criminally tainted assets and not a Penal Code punishment like imprisonment or fine but it serves the dual purpose of deterrence and ensures that crime does not financially benefit perpetrators.

15. The Apex Court has consistently held that the forfeiture proceeding are independent and can run parallel to the criminal prosecution. The order of the FIO does not prevent the accused from defending the criminal charge nor does it amount to finally confiscate the property. It only secures the property so that if the accused is convicted and the property is proven to be illegality acquired, the State may proceed with forfeiture but if the accused is acquitted in the trial the property may be released under section 68-Z.

16. The concept of attachment and forfeiture of illegally acquired property in India as laid down in Criminal Law Amendment Ordinance, 1944 has been subsequently incorporated in the form of Prevention of Money Laundering Act, 2002 and 107 of the BNSS. Section 107 of the BNSS enables the police to seek attachment of proceeds of crime for all offences, whereas PMLA 2002 is the only Act which seeks to punish any person who directly or indirectly attempt to induge or actually involved in any process or activity connected with the process of crime degenerated form a scheduled offence. The five Judge Bench of the Supreme Court in ***Hansraj Moolji Vs. State of Bombay,*** **AIR 1957 SC 497** has made the position of law clear with regard to continuation to force of the ordinance of 1944 (Para-27).

17. Therefore the supplementary charge sheet has been submitted by the IO in the instant case after conducting further investigation and it discloses that during further investigation the IO collected the freezing order under section 68F dated 11.04.2025 and found that huge amount of transactions have been done in multiple bank account of the petitioner no. 1 and 2. It is submitted that the IO have also collected bank account along with certificate under section 63 of BSA in respect of different bank account no. belonging to the petitioners and on the basis of such documents, he submitted supplementary charge sheet which has been accepted by the Court below. However such acceptance does not ifso facto constitute proof of the concerned documents. The onus remains on the prosecution to prove its case during the trial and the trial court has the liberty either to accept such documents or to disregard the same while considering the merits of the case and the petitioners will also have the liberty to cross examine the IO at the time of deposition in order to demolish the prosecution case with regard to the supplementary charge sheet as well.

18. Mr. Mukherjee on behalf of the petitioners strenuously argued that the proceeding under chapter VA are distinct independent and separate criminal proceeding as, the legislature has created a self-contained code providing a complete procedural framework, so the competent authority has no role to play in the conduct, supervision or progression of the criminal trial. His further submission is jurisdiction is confined exclusively to the proceedings envisaged in chapter VA which are civil-cum-administrative in nature and as such proceeding under the said chapter stands alone and no supplementary charge sheet to that extent was required to have filed or accepted by the court below.

19. Chapter VA of the NDPS Act provides for stringent provisions like forfeiture of the property. Such property as the heading of the chapter shows that the property must be derived from or used in illicit traffic and must be illegally acquired property in relation to any person to whom the chapter applies, which would mean only such property which was acquired wholly or partly out of or by means of any income attributable to the contravention of any provision of the Act or for a consideration wholly or partly out of or by means of any income attributable to the contravention of any provision of the Act or for a consideration wholly or partly traceable to any property referred to in sub clause (i) of section 68 B (g) or the Income or earning from the property. Accordingly it is clear that the property which is sought to be forfeited must be one which has a direct nexus with the income derived by way of contravention by any of the provision of the Act or any property acquired therefrom. The property having regard to the said definition would include any of the properties described therein and deeds of instrument evidencing interest therein derived from or used in the illicit traffic. Therefore, direction to forfeiture of the property is into two parts firstly it has to be identified in terms of section 68(F) of the Act. For the said purpose a satisfaction must be arrived at by the authority specified therein to the effect that the persons concerned had been holding any illegally acquired property and secondly on the basis of such information he is entitled to take steps for tracing and identifying the property and authorities entitled to seize or freeze such a property. (*Commentary on the NDPS Act, 2nd Edition Barowali & Barowalia, Lexis Nexis, page 1393).*

20. Therefore, even though the proceeding may run parallelly but at the same time the chapter applies only with such property which was acquired wholly or partly out of or by means of any income attributable to the contravention of any of the provisions of the Act. Furthermore with the acceptance of the supplementary charge sheet the court below has ratified the further investigation and therefore after acceptance of charge sheet the arguments advanced by the petitioner that no formal prayer was made by the investigating agency for further investigation or that no leave was granted by the court for conducting further investigation, does not find any leg to stand.

21. In view of aforesaid discussion, I do not find any merit in the instant application and as such it is liable to be rejected.

22. **CRR 4114 of 2025** thus stands dismissed.

23. However considering the fact that one of the petitioners is suffering long incarceration, the court below is directed to make every endeavour to conduct day to day trial without granting any unnecessary adjournment to either parties and to conclude the trial preferably within a period of three months from the next date of hearing.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)