

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

Court of Appeal / Criminal Motion No 20 of 2025

Between

Kishor Kumar A/L Raguan

... Applicant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing — Stay of execution — Application under s 60G of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) for permission to make a post-appeal application in a capital case]

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Kishor Kumar A/L Raguan

v

Public Prosecutor

[2025] SGCA 39

Court of Appeal / Criminal Motion No 20 of 2025
Tay Yong Kwang JCA
30 July 2025

30 July 2025

Tay Yong Kwang JCA:

1 This is an application by Mr Kishor Kumar A/L Raguan (“Mr Kishor”), a prisoner awaiting capital punishment (“PACP”), seeking a stay of execution of his death sentence scheduled for today, Wednesday 30 July 2025. The application was filed yesterday evening past office hours.

2 On 28 January 2022, Mr Kishor was convicted in HC/CC 2/2020 and sentenced to suffer death. His appeal in CA/CCA 4/2022 (“CCA 4”) was dismissed by the Court of Appeal on 11 October 2022.

3 In the present application, counsel for Mr Kishor, Mr Hua Yew Fai Terence, seeks a stay of execution of the death penalty on such terms that this court deems fit and proper under s 60L of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the “SCJA”) which provides that a stay of execution may

only be granted by the Court of Appeal. He also asks that there be no order as to costs for this application.

4 This application constitutes a post-appeal application in a capital case (“PACC application”) as it is an application made by a PACP after the “relevant date” of 11 October 2022 (the date of dismissal of the appeal by the Court of Appeal) for a stay of the execution of the death sentence on the PACP (s 60F of the SCJA). Before making a PACC application, Mr Kishor must apply to the Court of Appeal for and obtain permission to do so (an “application for PACC permission”) (s 60G(1) of the SCJA). This was not done.

5 Further, an application for PACC permission must be made by way of an originating application under O 24A r 1(3)(a) of the Rules of Court 2021. However, the present application is commenced as a Criminal Motion under the Criminal Procedure Code (2020 Rev Ed) (“CPC”).

6 Due to the fact that the death sentence is to be carried out today, I am prepared to overlook these procedural defects in the application and treat it as an application for PACC permission under s 60G of the SCJA. Pursuant to s 60G(2) of the SCJA, such an application may be heard and determined by a single Judge of the Court of Appeal.

7 There is a further procedural issue which the Supreme Court Registry, on my directions, informed the parties to address in written submissions. This concerns s 313(1)(ia)(ii) of the CPC read with Regulation 2 of the Criminal Procedure Code (Service on Singapore Prison Service for Application relation to Stay of Execution) Regulations 2024.

8 Regulation 2 of the above Regulations reads as follows:

2. For the purposes of section 313(1)(ia)(ii) of the Code and subject to regulation 3, an application for permission to apply for a stay of execution or an application for a stay of execution must be served on the Singapore Prison Service by delivering a copy of the application personally to an officer of the Singapore Prison Service not later than 6 p.m. of the day immediately before the date that the execution is scheduled —

(a) at the following address: HQ Sentry (along Jalan Bena), Singapore Prison Service Headquarters, 980 Upper Changi Road North, Singapore 507708; and

(b) enclosed in an envelope labelled “Service of Application to Court for Permission to Apply for Stay of Execution for [*insert name of person for whom the stay of execution is sought*]” or “Service of Application to Court for Stay of Execution for [*insert name of person for whom the stay of execution is sought*]”, as the case may be.”

9 The Prosecution contends that there was a breach of Regulation 2. It has verified with the Singapore Prisons Service that no such personal service was effected on the Singapore Prisons Service as at 6pm on 29 July 2025.

10 Counsel for Mr Kishor admits candidly that he was “not at the material time cognisant or aware of Regulation 2” and apologises for this. He states that he is presently in the process of serving a copy of the court papers on Singapore Prisons Service. He points out, nevertheless, that s 313(1)(ia)(ii) of the CPC merely states that the warrant of execution may be carried out if there is non-compliance with the service requirement, not that it must be carried out. He submits that the breach is procedural in nature and that the present application should still be considered on its merits.

11 The above breach may be a procedural one but it is one that could have drastic consequences. In the spirit of what I have stated above, bearing in mind the extreme urgency of this application, I will deal with the merits of this application and return to this procedural breach when I address the issue of costs towards the end of this judgment.

Facts and history of proceedings

The trial in HC/CC 2/2020

12 Mr Kishor claimed trial to one charge of trafficking in four packets of granular/powdery substance containing not less than 36.05 grammes of diamorphine (the “Drugs”), under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) and punishable under s 33(1) of the MDA. He delivered the Drugs to his co-accused, Mr Pung Ah Kiang (“Mr Pung”), near Mr Pung’s home on 29 July 2016. Mr Pung was charged with having possession of the Drugs for the purposes of trafficking, an offence under s 5(1)(a) read with s 5(2) and punishable under s 33(1) of the MDA.

13 Both Mr Kishor and Mr Pung were tried jointly before a Judge of the High Court (the “Judge”). It was undisputed that Mr Kishor brought the Drugs and delivered them to Mr Pung, and that Mr Kishor’s DNA was found on the Drugs (*Public Prosecution v Kishor Kumar a/l Raguan and another* [2022] SGHC 27 (“Trial GD”) at [65]–[66]). The Prosecution’s case was that Mr Kishor had actual possession of the Drugs and actual knowledge of the nature of the Drugs. It further relied on the presumption of knowledge under s 18(2) of the MDA which provides that any person who is proved or presumed to have had a controlled drug in his possession is presumed to have known the nature of that drug (Trial GD at [69]).

14 At the trial, Mr Kishor raised two defences: (a) first, he thought he was delivering shiny crystals or decorative “stones” or thought he was delivering “ice” (Trial GD at [71] and [73]); and (b) second, that the Prosecution failed to establish the chain of custody of the Drugs (Trial GD at [82]–[92]).

15 The Judge found that the elements of the charge for Mr Kishor were made out (Trial GD at [82]–[115]):

(a) It was undisputed that Mr Kishor delivered the Drugs to Mr Pung, a fact which he admitted in court and in his statements. The Judge also found that the chain of custody of the Drugs was established (Trial GD at [83] and [92]).

(b) Mr Kishor had knowledge of the nature of the Drugs based on the totality of the evidence. Alternatively, he failed to rebut the presumption of knowledge under s 18(2) of the MDA (Trial GD at [94]–[114]).

(c) Mr Kishor trafficked in the Drugs because he had admitted to the act of delivering the Drugs to Mr Pung (Trial GD at [93]).

16 The Judge convicted Mr Kishor and passed the mandatory death sentence on him. Although the Judge found that both Mr Kishor’s and Mr Pung’s roles were limited to being couriers, the Prosecution did not issue Mr Kishor with a certificate of substantive assistance under s 33B(2)(b) of the MDA (Trial GD at [4]). Therefore, the death sentence was mandatory for Mr Kishor. Mr Pung was also convicted on his charge. He was issued a certificate of substantive assistance by the Prosecution and the Judge imposed the alternative sentence of life imprisonment on Mr Pung (Trial GD at [4]).

The appeal in CA/CCA 4/2022 and the Court of Appeal’s decision

17 In CA/CCA 4/2022 (“CCA 4”), Mr Kishor appealed against his conviction and sentence. The appeal was dismissed by this court (comprising Sundaresh Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA) on

11 October 2022. Mr Pung also filed an appeal against his sentence in CA/CCA 3/2022 but he withdrew his appeal on 16 March 2022.

18 In dismissing Mr Kishor’s appeal, this court held that there was no ground on which an appeal on the point of knowledge could stand. Mr Kishor never ran the case before the Judge that he thought he was in possession of some other type of contraband. He said he suspected at some stage that it was “ice” but, having opened the packaging, he saw that it was not “ice”. At the trial, he said he thought it was crystals or coloured stones. The Court of Appeal held that Mr Kishor could not have believed this because he had seen that the contents looked like brown pieces and looked nothing like crystals or coloured stones.

19 The Court of Appeal also dismissed Mr Kishor’s contention that there was a reasonable doubt that the chain of custody was not established. Mr Kishor had the opportunity to explore this contention at the trial and he did so. The Judge considered the evidence and the explanations given and then accepted the Prosecution’s evidence. A key fact in the case was that Mr Kishor’s DNA was found on the bundles. That made it impossible to suggest that those were not the bundles that he had been carrying.

20 The Court of Appeal was satisfied that there was no merit in the appeal and dismissed it. The mandatory death penalty was therefore affirmed. To date, no petition for clemency has been submitted to the President although the appeal was concluded on 11 October 2022, more than two years and nine months ago.

Post-appeal applications

21 After the dismissal of Mr Kishor’s appeal in CCA 4, Mr Kishor made a number of post-appeal applications in conjunction with other PACPs. These applications are outlined below.

22 On 26 September 2023, 36 inmates, including Mr Kishor, commenced HC/OA 987/2023 (“OA 987”), seeking declarations that ss 60G(7)(d) and 60G(8) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed), which were two new provisions to be introduced by s 2(b) of the Post-appeal Applications in Capital Cases Act 2022 (Act 41 of 2022) (the “PACC Act”), were void for being inconsistent with Arts 9 and 12 of the Constitution. The Attorney-General applied for OA 987 to be struck out as the PACC Act had not yet come into operation. On 5 December 2023, OA 987 was struck out by the General Division of the High Court (see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 4 SLR 331 at [65]). On 27 March 2024, the appeal in CA/CA 1/2024 against this decision was dismissed (see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 1 SLR 414 at [9]).

23 On 28 March 2024, 36 inmates, including Mr Kishor, filed HC/OA 306/2024 (“OA 306”), seeking a declaration that the purported policy of the Legal Aid Scheme for Capital Offences (“LASCO”) Assignment Panel not to assign counsel for any post-appeal applications was inconsistent with Arts 9 and 12 of the Constitution. They also sought damages. On 20 May 2024, OA 306 was struck out by the General Division of the High Court in *Iskandar bin Rahmat and others v Attorney-General* [2024] 5 SLR 1290. On 29 May 2024, the inmates filed an appeal in CA/CA 38/2024. Their appeal was dismissed by the Court of Appeal on 9 September 2024.

24 On 19 September 2024, 31 inmates, including Mr Kishor, filed HC/OA 972/2024 (“OA 972”), seeking declarations that various provisions of the SCJA (ie, ss 60G(7)(d), 60G(8), 60H(6) and 60I(1) of the SCJA) and s 313(2) of the CPC were inconsistent with Arts 9 and 12 of the Constitution. On 5 February 2025, the General Division of the High Court struck out OA 972:

see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2025] SGHC 20. No appeal was filed against this decision.

25 On 8 July 2025, the President issued an order under s 313(1)(f) of the CPC for Mr Kishor’s execution to be carried out on 30 July 2025. Mr Kishor received the notice of the scheduled date of execution on 23 July 2025.

The present application

Mr Kishor’s case

26 On 29 July 2025 at 9.02pm, the evening before the scheduled date of execution, counsel for Mr Kishor filed the present application. At 9.03pm, counsel emailed the application and his supporting affidavit to the Supreme Court Registry as there were technical issues in e-filing the documents.

27 The counsel’s affidavit explains that the basis on which Mr Kishor seeks a stay of execution of the death penalty is that it is “only fair and prudent in the circumstances for his counsel to have more time to obtain a document or documents from the Central Narcotics Bureau and/or the Attorney-General’s Chambers for purposes of advising the Applicant if any review proceedings and/or such other proceedings are viable and if any of such legal proceedings prove viable, for counsel to prepare the corresponding papers and to file the same”. Counsel confirmed to the Supreme Court Registry that his affidavit encompasses his submissions in this matter.

28 The affidavit states that sometime between 2024 to around the first quarter of 2025, Mr Kishor “fortuitously met an inmate with designation X10102019” (the “Inmate”) who was also a PACP. Mr Kishor was briefly

acquainted with the Inmate before his remand and eventual incarceration. This meeting resulted in Mr Kishor “recalling four important matters”:¹

(a) that Mr Kishor had previously delivered what he believed to be “disco drugs”, which he termed as “controlled drugs, which were not so strong or damaging”, to a locality at or about Block 156A Toa Payoh (“Blk 156A”);

(b) that Mr Kishor was previously interviewed by officers from the Central Narcotics Bureau (“CNB”) in relation to his possible involvement in illicit drug activities somewhere in Toa Payoh but not at Blk 156A. Consequently, Mr Kishor could not have provided any or much assistance to the authorities. A statement was recorded from Mr Kishor on 6 May 2024 at 10.15am (“Statement 1”). Statement 1 was exhibited in the affidavit;

(c) later, upon learning that the CNB was in fact investigating illicit drug activities involving Blk 156A, Mr Kishor requested CNB to dispatch officers to the prison to record his statements concerning the episode at Blk 156A. Mr Kishor subsequently “provided much information concerning illicit drug activities” in another statement (“Statement 2”); Statement 2 could not be exhibited as the authorities were not able to locate it yet; and

(d) that Mr Kishor “realised and recalled, that at all material times (including at all times up to the point of his arrest for the index offence), he was not acquainted with, nor did he have for all intents and purposes knowledge of hard drugs like heroin, methamphetamine and cannabis”.

¹ Affidavit at paras 11–17.

Therefore, he could not have had the knowledge of the nature of the drug (heroin) in the four bundles.

29 Mr Kishor therefore instructed his counsel to obtain Statement 1 and Statement 2 to assess “if any review application or such other proceedings are viable and if so, for counsel to file the corresponding papers”. A series of communication initiated by Mr Kishor’s counsel followed:

(a) On 7 April 2025, counsel wrote to the CNB seeking copies of statements furnished by Mr Kishor to the CNB between 2017 to 2024 in relation to suspected illegal drug activities in or around the vicinity of Blk 156A and/or Block 157 Lorong 1 Toa Payoh.

(b) Between 25 April to 28 April 2025, the AGC informed counsel, by way of a call, that the statements were not found in Mr Kishor’s case file or investigation papers and had not been located.²

(c) On 20 May 2025, counsel wrote to the CNB requesting the CNB to check the existence of the statements in the investigation papers of the Inmate.³

(d) On 29 May 2025, the AGC wrote to counsel extending a copy of Statement 1 which had been located in the Inmate’s case file. No mention was made of any other statement.

30 The crux of Mr Kishor’s case in the present application is that there should be a stay of his execution as he needs more time for Statement 2 to be obtained and studied by his counsel who will then be able to advise him on

² Affidavit at pp 120–122.

³ Affidavit at pp 122–123.

whether there is sufficient material to file review or other proceedings to set aside his conviction. Mr Kishor highlights the point that he “would not have been able to draw from these documents had he not fortuitously met” the Inmate after his appeal in CCA 4 was dismissed and “having therefrom learnt about investigations in respect of 156A having been commenced”.

The Prosecution’s case

31 The Prosecution filed its written submissions this morning. The Prosecution contends that the present application fails to set out or even attempt to explain:

- (a) the relevance of the document purportedly pertaining to a delivery of “*disco drugs*” by Mr Kishor to a locality at Blk 156A on 11 April 2016 to the charge for which he stands convicted;
- (b) the nature of the information as set out in the document (or at the very least, what Mr Kishor believes to be set out in the same) and how it would assist in respect of his conviction and/or sentence; and
- (c) how the document sought would prove the assertion at [17] of the supporting affidavit that Mr Kishor “realised and recalled” that he “was not acquainted with, nor did he have knowledge of hard drugs like, heroin, methamphetamine and cannabis. And therefore, the Applicant could not have knowledge of nature of the drug (heroin) packed into 4 bundles (as the case may be) in respect of the index offence”.

32 There is no indication of the factual or logical connection between the documents sought and the correctness of the conviction and sentence. Mr Kishor is uncertain whether the documents in issue would aid him in setting aside his

conviction and this falls very far short of the threshold required for a stay of execution and there is no reasonable prospect of success.

33 The Prosecution also states that its reply to counsel dated 29 April 2025 has not been exhibited in the affidavit. In that reply, the Prosecution informed counsel that Mr Kishor did not provide the CNB with any statement at any time concerning the illegal drug activities in the vicinity of Blocks 156A and 157 Lorong 1, Toa Payoh and that the CNB does not have an officer named Mohd Farif bin Mohd Yusof. All statements sought and available to the CNB and the Attorney-General's Chambers were supplied to counsel on 29 April 2025.

34 The Prosecution submits that the present application is a backdoor attempt to relitigate the issue of knowledge which was thoroughly canvassed and considered both at the trial and at the appeal. It also contends that the timing of this application coupled with the lack of any sensible or observable connection between the documents in question and Mr Kishor's conviction and sentence give rise to the overwhelming inference that the application was not taken out in good faith and is an abuse of process.

35 The Prosecution asks that this application be dismissed summarily without an oral hearing and that costs of \$3,000 be ordered against counsel personally in the circumstances of this case. It submits that counsel's conduct is plainly unreasonable and improper as the present application falls far short of the legal threshold required in law and was filed only on the eve of the scheduled execution.

The applicable law

36 As mentioned earlier, in order to make a PACC application, an applicant must first obtain permission from the Court of Appeal (s 60G(1) of the SCJA).

Section 60F of the SCJA defines a PACC application as any application which satisfies the following three criteria:

(a) First, the application is not a “review application” within the meaning of s 394F of the CPC to review an earlier decision of the Court of Appeal relating to the offence for which the sentence of death was imposed on a PACP.

(b) Second, the application is made by a PACP after the “relevant date”. In relation to the first PACC application by a PACP, this means:

(i) the date of dismissal of the appeal by the Court of Appeal in relation to the offence for which the sentence of death was imposed on the PACP; (ii) the date of imposition of the sentence of death by the Court of Appeal in an appeal against the acquittal of the PACP of an offence punishable with death, or against a non-capital sentence imposed on the PACP; or (iii) the date of the issuance by the Court of Appeal of a certificate confirming the imposition of the sentence of death on the PACP.

(c) Third, either of the following applies: (i) “the application is for a stay of the execution of the death sentence on the PACP”; or (ii) “the determination of the application calls into question, or may call into question, the propriety of the conviction of, the imposition of the sentence of death on, or the carrying out of the sentence of death on, the PACP”.

37 In determining whether to grant an application for permission to make a PACC application, the Court of Appeal must consider the following matters under s 60G(7) of the SCJA (*Roshdi bin Abdullah Altway v Public Prosecutor and another matter* [2025] 1 SLR 605 at [29]):

- (a) whether the PACC application to be made is based on material (being evidence or legal arguments) that, even with reasonable diligence, could not have been adduced in court before the relevant date;
- (b) whether there was any delay in filing the application for PACC permission after the PACP or counsel for the PACP obtained the material and the reasons for the delay;
- (c) whether the requirement under s 60G(4) to file written submissions for the PACC application within prescribed periods was complied with; and
- (d) whether the PACC application to be made has a reasonable prospect of success.

38 Pursuant to s 60G(8)–60G(10) of the SCJA, an application for permission to make a PACC application may be summarily dealt with by a written order of the Court of Appeal without being set down for hearing. Before summarily refusing or granting an application for permission to make a PACC application, the Court of Appeal must consider the applicant’s written submissions, but it is only required to consider the respondent’s written submissions before summarily granting an application for permission to make a PACC application.

The decision of the Court

39 I agree with the Prosecution that the present application is nothing more than a frivolous attempt to stay the execution of sentence. Statement 1 was given by Mr Kishor more than a year after his appeal was dismissed by the Court of Appeal. The purported Statement 2 was made even later. How would these statements show, even peripherally, that Mr Kishor “realised and recalled, that

at all material times (including at all times up to the point of his arrest for the index offence), he was not acquainted with, nor did he have for all intents and purposes knowledge of hard drugs like heroin, methamphetamine and cannabis” and therefore, he could not have had the knowledge of the nature of the drug (heroin) in the four bundles? Mr Kishor’s state of knowledge of “disco drugs” or of “hard drugs” was always something that he could testify about and requires no meeting or discussion with anyone, fortuitous or otherwise, for him to “realise and recall”.

40 This issue of knowledge of the nature of the drugs identified in Mr Kishor’s charge was contested by the defence at the trial and the Judge gave cogent reasons for rejecting his claim of lack of such knowledge after considering all the evidence. The Judge’s findings were affirmed on appeal. No material has been placed before me that would cast even a shadow of doubt on the correctness of the Court of Appeal’s decision.

41 Further, the present application has affirmed that it is merely to ask for more time to consider whether there are grounds for mounting a challenge to the Court of Appeal’s decision, not that there are such grounds discovered. The application has therefore not even reached the level where there is a need to consider “reasonable prospects of success”. If any intended application purports to raise the issue of lack of knowledge again, I repeat what I have set out above and hold that there is a complete lack in logic and that such an application has absolutely no prospect of success.

42 Incidentally, just for completeness, Mr Kishor featured in an earlier application by another PACP (see *Moad Fadzir bin Mustaffa v Public Prosecutor* [2024] 1 SLR 677). In that application, Mr Moad Fadzir bin Mustaffa sought permission to bring a review application under the CPC on the

basis that there was new material in the form of a statement by Mr Kishor. I commented at [33] of that earlier decision that Mr Kishor could hardly be considered a credible witness for the reason set out therein.

Conclusion

43 Having considered counsel's affidavit and the parties' written submissions, I dismiss this application for a stay of execution summarily without the need for an oral hearing pursuant to s 60G(8) of the SCJA.

44 On the question of costs, while procedural errors (such as those identified at the start of the judgment) may be looked at leniently by the court especially if there are unavoidable extreme time constraints, filing of completely unmeritorious applications in court is quite another matter. On the facts here, it is clear that counsel for Mr Kishor has taken out this last-minute application even though it is totally devoid of merit. This has led to unnecessary and rushed work on the part of the Prosecution which has to assemble its materials and present its case in a matter of hours. In all these circumstances, it is only just that counsel for Mr Kishor be ordered to pay costs personally to the Prosecution. I therefore order Mr Hua Yew Fai Terence to pay personally the Prosecution costs fixed at \$3,000.

Tay Yong Kwang
Justice of the Court of Appeal

Hua Yew Fai Terence (Rex Legal Law Corporation) for the
applicant;
John Lu and Paul Chia (Attorney-General's Chambers) for the
respondent.
