

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 16

Court of Appeal / Originating Application No 9 of 2025

Between

Roshdi bin Abdullah Altway

... Applicant

And

Public Prosecutor

... Respondent

Court of Appeal / OAC No 1 of 2025

Between

Roshdi bin Abdullah Altway

... Applicant

And

Attorney-General of Singapore

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing — Stay of execution]

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Roshdi Bin Abdullah Altway
v
Public Prosecutor and another matter

[2025] SGCA 16

Court of Appeal — Originating Application No 9 of 2025 and OAC No 1 of 2025

Belinda Ang Saw Ean JCA
10 April 2025

10 April 2025

Belinda Ang Saw Ean JCA:

1 The applicant, Mr Roshdi Bin Abdullah Altway (the “Applicant”), is a prisoner currently awaiting capital punishment (“PACP”). The Applicant’s execution is scheduled for 10 April 2025. On 9 April 2025, he filed two applications. CA/OA 9/2025 (“the First Application”) was filed on behalf of the Applicant at around 5.06pm by his counsel, Mr Patrick Fernandez (“Mr Fernandez”). It is supported by an affidavit affirmed by counsel and written submissions. CA/OAC 1/2025 (“the Second Application”) was filed at around 5.27pm by the Applicant himself. It is supported by an affidavit affirmed by the Applicant and written submissions.

2 In the First Application, the Applicant seeks the following orders:

- (a) The Applicant be granted permission to file a post-appeal application in a capital case (“PACC application”) against the decision in CA/CCA 29/2020 (“CCA 29”) made on 11 November 2021.
- (b) A stay of the Applicant’s execution pending the conclusion of this application, as well as, the subsequent PACC application.
- (c) Such further or other orders as this Honourable Court deems fit.

3 The First Application relies on the following grounds to justify why permission should be granted to bring a PACC application:

- (a) The Applicant needs more time to file a second petition for clemency to the President (his first petition for clemency having already been rejected on 7 June 2022).
- (b) The Applicant wishes to file a complaint to the Law Society of Singapore in respect of his previous counsel’s conduct.

4 In the Second Application, the Applicant seeks the following orders:

- (a) That the execution of the Applicant scheduled for 10 April 2025 be stayed pending the determination of this permission application and any consequent PACC application.
- (b) That permission be granted to file a PACC application seeking a prohibiting order of the execution of the Applicant scheduled for 10 April 2025, and a quashing order of the notice of execution dated 3 April 2025.
- (c) Any other relief this Honourable Court deems fit.

5 The Second Application relies on the following grounds to justify why permission should be granted to bring a PACC Application:

- (a) The Applicant’s execution should be stayed pending the determination of CA/SUM 16/2023 (“SUM 16/2023”) and CA/CA 2/2023 (“CA 2/2023”), which engage the constitutionality of the presumptions contained in the Misuse of Drugs Act (2020 Rev Ed).
- (b) In the alternative, the decisions of the High Court and Court of Appeal were demonstrably wrong in finding that the Applicant had both actual knowledge and presumptive knowledge.

In the Second Application, I note that there is an inconsistency between the originating application and the submissions – the submissions ask for a stay of execution pending the determination of SUM 16/2023 and CA 2/2023, but this is not prayed for in the originating application. Nonetheless, I am prepared to accept that the Applicant seeks a stay of execution pending the determination of SUM 16/2023 and CA 2/2023.

6 Ordinarily, a second application for permission to bring a PACC application (an “application for PACC permission”) cannot be filed while a previous PACC application is pending (s 60I(1) of the Supreme Court of Judicature Act (2020 Rev Ed) (“SCJA”)). There are two PACC applications before me. This would be a bar to the Second Application. However, I am prepared to overlook this procedural defect and proceed to hear both the First and Second Applications for the purposes of my analysis as a single PACC application, since they seek the same reliefs in substance – permission to bring a PACC application, and a stay of the Applicant’s execution.

7 For the reasons which follow, I summarily dismiss the First and Second Applications under s 60G(8) of the SCJA without the need for an oral hearing.

Facts and Procedural History

The Applicant’s trial

8 The Applicant was charged with, and he claimed trial to, a capital charge (the “Charge”) of having in his possession for the purpose of trafficking 267 packets and 250 straws containing 2,201.22g of granular/powdery substance, which was analysed and found to contain not less than 78.77g of diamorphine (the “Drugs”), an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act 1973 (Cap 185, 2008 Rev Ed) (the “MDA”). On 17 August 2020, the Applicant was convicted of the Charge (see *Public Prosecutor v Roshdi bin Abdullah Altway* [2020] SGHC 232 (the “Trial GD”)). As he was not a courier and he had not been issued a certificate of substantive assistance, the Judge imposed the mandatory death penalty on 17 August 2020.

9 At trial, the Applicant admitted to having both the possession of the Drugs and knowledge of their nature. The only element of the Charge that was in dispute at trial was whether the Applicant’s possession of the Drugs was for the purpose of trafficking (Trial GD at [10]–[12]).

10 The Applicant’s defence was that he was just safekeeping the Drugs for one Chandran Prasanna Anu (“Chandran”), to whom he had all along intended to return the Drugs. This “safekeeping defence” which is referred to herein as the “bailment defence”, was not only raised at trial for the first time, but also materially contradicted what the Applicant had described as the purpose of the Drugs in various statements recorded over the course of investigations. After an

ancillary hearing, the trial judge (the “Judge”) rejected the Applicant’s challenge to the admissibility of the statements.

11 In the statements, the Applicant had identified the Drugs and admitted that the Drugs in his possession were for sale, that he had received, repacked and delivered drugs on multiple occasions, and that he had collected money from customers. He was also able to provide in detail the prices and weights of the drugs he had sold. In particular, in his fifth long statement recorded on 27 September 2016, the Applicant identified the Drugs as ‘heroin’, explained that they were for sale at \$70–80 a packet, and described his method of packing the same (Trial GD at [37] and [38]). The Applicant also identified the three digital weighing scales which he said were for use in weighing and packing products. The latter items which were found to be stained with diamorphine together with seized spoons, and various pieces of paper formed the various extrinsic evidence that supported the Applicant’s role as a trafficker of the Drugs. In his fifth long statement, the Applicant explained that the spoons were used “as scoop [*sic*] to pack the heroin”, various pieces of paper were “used as a mat to do my packing [of the drugs]” and the weighing scales were “used for weighing drugs” and “packing drugs” (Trial GD [42]).

12 Notably, the Judge concluded that the prosecution had proved the element of possession for the purposes of trafficking beyond reasonable doubt based essentially on the Applicant’s *admissions* contained in the various statements. The extrinsic evidence supported the description of the Applicant’s activities as alluded to in the statements. In short, there was a finding that the Applicant was guilty of trafficking and his guilt was proven beyond reasonable doubt without the use of the presumption under s17(c) of the MDA. This is clear from the Trial GD at [46] and [49]:

46 I held, therefore, that the Prosecution had proven the element of possession for the purposes of trafficking beyond reasonable doubt. In the present case, although s 17(c) of the MDA was applicable, I considered that there was sufficient evidence to prove the charge beyond a reasonable doubt. In the alternative, if there was not, Roshdi had not rebutted the presumption on the balance of probabilities.

...

49 I held that the Prosecution had proved the charge against [the Applicant] beyond reasonable doubt and I convicted him accordingly.

13 In disbelieving the bailment defence, the Judge said the Applicant had failed to give a coherent explanation for the material discrepancies between his bailment defence at trial and the admissions contained in his statements (Trial GD at [44]). Furthermore, the bailment defence was not applicable on the facts in that the Applicant's possession of the Drugs was not merely to safekeep but was with a view to furthering their passage along the supply chain (Trial GD [47]).

The Applicant's appeal

14 The Applicant appealed against his conviction to a five-Judge *coram* of the Court of Appeal in CCA 29. He made the following arguments as to why the Judge had erred in finding that he had the Drugs in his possession for the purpose of trafficking, such that his appeal should be allowed. Amongst other things: (a) the Judge had incorrectly admitted and relied on statements made by the Applicant; (b) the Judge had wrongly rejected his bailment defence in that his defence ought to have been believed and that had it been believed, the element of possession for the purpose of trafficking would not have been made out; (c) there had been late disclosure by the Prosecution of four police statements given by Chandran, a material witness, in breach of the Prosecution's additional disclosure obligations laid down in *Muhammad Nabill bin Mohd*

Fuad v PP [2020] 1 SLR 984 (“*Nabill*”); and (d) the Prosecution had failed to rebut the bailment defence due to its failure to call Chandran as a witness.

15 The Court of Appeal upheld the Judge’s conviction and sentence and dismissed CCA 29 on 11 November 2021: see *Roshdi bin Abdullah Altway v Public Prosecutor* [2022] 1 SLR 535 (“*Roshdi CA*”). The Court of Appeal in affirming the conviction concluded as follows:

- (a) The Judge had correctly admitted and relied on the statements (*Roshdi CA* at [67]–[70] and [183]).
- (b) The Judge had correctly convicted the Applicant of the Charge in that the element of possession for the purpose of trafficking was made out taking all the evidence together in the round (*Roshdi CA* at [102] and [183]).
- (c) The Judge had been correct not to accept the safekeeping defence (*ie*, the bailment defence) as a matter of fact (*Roshdi CA* at [90] and [126]).
- (d) Even assuming if the Applicant had had a safekeeping arrangement with Chandran, the element of possession for the purpose of trafficking would nevertheless be made out (*Roshdi CA* at [124], [126] and [184]). The Applicant was undoubtedly aware that by supposedly safekeeping the Drugs for Chandran, he was facilitating the process of their intended sale and distribution.
- (e) Since the safekeeping defence (*ie*, the bailment defence) was hopeless (*Roshdi CA* at [126]), the issues relating to the Prosecution’s additional disclosure obligations did not in fact arise – it was not

necessary for the Prosecution to call Chandran as a witness to rebut the bailment defence (*Roshdi CA* at [128]). In any event, the Prosecution's disclosure of Chandran's statements was not late or in breach of its additional disclosure obligations in *Nabill* (*Roshdi CA* at [180]).

16 The Court of Appeal pointed out that the inevitable conclusion based on the Applicant's own incriminating admissions in his statements was that he was in possession of the Drugs for the purpose of trafficking and concluded as follows:

185 Thus, based on the Contested Statements [which were admitted in evidence after an ancillary hearing], the Prosecution has established the element of possession for the purpose of trafficking beyond a reasonable doubt. In any case, Roshdi has failed to rebut the presumption of trafficking in s 17(c) of the MDA. We therefore affirm Roshdi's conviction on the Charge. Where a person is convicted under s 5(1)(a) read with s 5(2) of the MDA for trafficking in more than 15g of diamorphine, the punishment prescribed under s 33 read with the Second Schedule to the MDA is death. Roshdi does not contend on appeal that if his conviction stands, the alternative sentencing regime in s 33B of the MDA is available. Roshdi was not issued a certificate of substantive assistance and he is in any event not a courier (see GD ([5] *supra*) at [50]). There is therefore no basis for us to set aside or otherwise substitute the death sentence imposed by the Judge.

[emphasis added]

As a result, the Court of Appeal dismissed CCA 29 on 11 November 2021.

17 Following the dismissal of his appeal on conviction and sentence, the Applicant petitioned to the President for clemency on 9 March 2022. On 7 June 2022, the Applicant's petition was rejected after due consideration of the petition and on the advice of the Cabinet.

Post-appeal applications

18 The Applicant did not file any application to review *Roshdi CA*, namely the decision of the Court of Appeal dismissing his appeal against conviction and sentence, under s 394H of the CPC. However, the Applicant had together with other inmates filed several post-appeal applications.

19 On 26 September 2023, the Applicant together with 35 other inmates, applied in HC/OA 987/2023 (“OA 987/2023”) for declarations that certain provisions in the Post-appeal Applications in Capital Cases Act 2022 (No 41 of 2022), which would have introduced ss 60G(7)(d) and 60G(8) of the SCJA, were void for being inconsistent with Arts 9 and 12 of the Constitution of the Republic of Singapore (2020 Rev Ed) (the “Constitution”). Sections 60G(7)(d) and 60G(8) of the SCJA were new provisions introduced by way of s 2(b) of the Post-appeal Applications in Capital Cases Act 2022 (Act 41 of 2022) (the “PACC Act”) but which were not yet operative at the time because the PACC Act had not yet come into force. Section 60G(7)(d) requires the court, in deciding whether to grant permission for a PACC application to be brought, to consider whether the contemplated PACC application has a reasonable prospect of success (among other factors in s 60G(7)), while s 60G(8) provides that an application for permission to bring a PACC application may be dealt with summarily without an oral hearing.

20 In response, the Attorney-General applied by way of HC/SUM 3096/2023 (“SUM 3096/2023”) to strike out OA 987/2023 on the basis that the PACC Act had not yet come into force. The General Division of the High Court allowed SUM 3096/2023 and struck out OA 987/2023 on 5 December 2023 (*Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 4 SLR 331). In CA/CA 1/2024, the applicants in OA 987/2023 appealed

against the General Division of the High Court's decision in SUM 3096/2023 to strike out OA 987/2023. The Court of Appeal dismissed this appeal on 27 March 2024 (*Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 1 SLR 414).

21 Next, the Applicant along with 35 other prisoners filed HC/OA 306/2024 ("OA 306/2024"), seeking a declaration that the alleged policy of the Legal Aid Scheme for Capital Offences ("LASCO") not to assign LASCO counsel for any post-appeal applications was inconsistent with Arts 9 and 12 of the Constitution. Again, the Attorney-General applied to strike out OA 306/2024. The General Division of the High Court struck out OA 306/2024 on 20 May 2024 (*Iskandar bin Rahmat and others v Attorney-General* [2024] 5 SLR 1290). In CA/CA 38/2024, the applicants in OA 306/2024 appealed against this decision but the Court of Appeal dismissed their appeal on 9 September 2024.

22 Following this, the Applicant and 30 other inmates filed HC/OA 972/2024 ("OA 972/2024") on 19 September 2024, seeking declarations that ss 60G(7)(d), 60G(8), 60H(6) and 60I(1) of the SCJA, and s 313(2) of the CPC, were all void for inconsistency with Arts 9 and 12 of the Constitution. I have summarised ss 60G(7)(d) and 60G(8) above (see [19]). Section 60H(6) provides that a PACC application may be disposed of without an oral hearing, and s 60I(1) limits the right of an applicant to bring a subsequent application for PACC permission where such an application, or a PACC application proper, is already pending before the Court of Appeal.

23 As for s 313(2) of the CPC, it is related to s 313(1)(ia)(ii). Section 313(1)(ia)(ii) provides that a warrant of execution may not be carried out when, *inter alia*, there is an application for permission to apply for a stay of execution,

or an application for a stay of execution, filed in the Court of Appeal and served on the Singapore Prison Service. Section 313(2) modifies this position by stating that a warrant of execution can be carried out despite s 313(1)(ia)(ii) if certain conditions apply to the applicant who filed the application which is the subject of s 313(1)(ia)(ii) – for instance, if that applicant had previously been found by the Court of Appeal to have frustrated the process of court in relation to an earlier “relevant application” (as defined in s 60F of the SCJA).

24 The Attorney-General applied by way of HC/SUM 2898/2024 (“SUM 2898/2024”) to strike out OA 972/2024. On 5 February 2025, the General Division of the High Court allowed SUM 2898/2024 and struck out OA 972/2024 (*Masoud Rahimi bin Mehrzad and others v Attorney-General* [2025] SGHC 20).

25 On 27 March 2025, the President issued an order under s 313(1)(f) of the CPC for the Applicant to be executed on 10 April 2025. The Applicant was notified of the execution date on 3 April 2025. After being informed of the date of execution, the Applicant filed the First and Second Applications on 9 April 2025.

26 As directed by the court, the respondent’s written submissions in reply were filed today. The respondent did not file any written affidavit in reply.

Parties’ cases

The Applicant’s case

27 In the First and Second Applications, the Applicant submits that a stay of his execution should be granted on four grounds:

- (a) First, the Applicant wishes to make a fresh petition for clemency to the President (the “Fresh Clemency Ground”).
- (b) Second, the Applicant wishes to make a complaint to the Law Society of Singapore about the conduct of his previous solicitors (“Intended Complaint Ground”).
- (c) Third, the Applicant should be granted a stay of execution pending the determination of SUM 16/2023 and CA 2/2023, like the applicant in this court’s recent decision of *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 237 (“*Pannir*”). This is because SUM 16/2023 and CA 2/2023 engage the constitutionality of the presumptions in ss 17 and 18 of the MDA. As a result, if ss 17 and 18 of the MDA ultimately turn out to be unconstitutional, his conviction might be undermined (the “MDA Presumptions Ground”).
- (d) Fourth, it was wrong for the High Court and Court of Appeal to find “that the [Applicant] had both actual knowledge as well as presumptive knowledge” (the “Inconsistency Ground”).

The Respondent’s case

28 The respondent contends that all four grounds are devoid of merit, for the following reasons:

- (a) Fresh Clemency Ground: the Applicant’s assertion of deteriorating health is devoid of evidence. There is no explanation as to why the fresh clemency petition could not have been submitted earlier.
- (b) Intended Complaint Ground: no lawyer has been named as the subject of the potential complaint, and the alleged lapse and matter that

the lawyer was engaged on has not been particularised. Though the Applicant pleads ignorance about the Law Society complaint process, he managed to time two concurrent applications to the Court of Appeal before his scheduled execution.

(c) MDA Presumptions Ground: The pending proceedings in SUM 16/2023 and CA 2/2023 have no bearing on the Applicant's conviction, with both the High Court and the Court of Appeal finding beyond a reasonable doubt that the Applicant had Drugs in his possession for the purpose of trafficking.

(d) Inconsistency Ground: This is an intentional misreading of the Trial GD and *Roshdi CA* because the issue of knowledge was not even in dispute.

Relevant Law

29 In order to make any PACC Application, an applicant must first obtain permission from the Court of Appeal (s 60G(1) SCJA). In deciding whether to grant an application for permission, the Court of Appeal must consider the matters set out in s 60G(7) of the SCJA. These are:

- (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 mentioned in (a) and the reasons for the delay;
- (c) whether s 60G(4) is complied with; and

- (d) whether the PACC application to be made has a reasonable prospect of success.

Analysis

30 Consideration (c) in s 60G(7) of the SCJA is not in contention in relation to both the First and Second Applications. I now proceed to analyse the other considerations under each ground.

Fresh Clemency Ground

31 The Applicant avers that, shortly after the rejection of his first clemency petition (*ie*, 7 June 2022), he had developed a heart condition and required a bypass operation. He submits that his deteriorating health condition is a valid reason to file a fresh (second) clemency petition to the President. To file this second clemency petition, the Applicant needs time for his current solicitors to obtain his latest medical records, his doctor's opinions, and other information. He also submits that it is cruel and inhumane to execute him when his health is deteriorating.

32 In my view, this submission is wholly without merit for two reasons. First, if I accept the Applicant's allegation that his health started deteriorating as early as June 2022 after his clemency petition was rejected, there is no explanation for this sudden decision to file a fresh clemency application based on ill health. Nothing was done about this for a period of almost three years. The fact that he needs time to obtain medical records is an unacceptable excuse. The Applicant could have taken the necessary steps to file a fresh clemency application long before his lawyers were instructed on 8 April 2025, engaging consideration (b) of s 60G(7) of the SCJA. This Fresh Clemency Ground is an afterthought.

33 Second, and in any case, this court has held that seeking more time to file a petition for clemency does not justify a stay of execution (*Masoud Rahimi bin Mehrzad v Public Prosecutor* [2024] SGCA 56 (“*Masoud (Stay)*”). After all, there is no right to file a second or any subsequent petitions for clemency once a PACP’s first petition has been rejected by the President. It follows, therefore, that there is no legal basis to seek a further period to take advice on the second or subsequent petitions (*Masoud (Stay)* at [66]), which renders the Fresh Clemency Ground meritless (consideration (d) of s 60G(7) of the SCJA). I thus decline to grant permission for the Applicant to bring a PACC application on the basis of the Fresh Clemency Ground.

Intended Complaint Ground

34 The Applicant’s complaint against his previous counsel is that they “failed to act on his instructions despite receiving professional fees in the sum of \$10,000”. The Applicant claims that he did not file a complaint earlier because “he did not know the process”, but that after he met his current lawyer, he wanted to file a complaint. The Applicant further cites the recent decision of *Pannir* for the proposition that there is a “strong public interest” in ensuring that any grievances the Applicant may have against his previous solicitor is properly explored and addressed prior to his execution. Finally, the Applicant explains that his current lawyer is obliged under the Legal Profession Act 1966 to give to the Applicant’s former counsel an opportunity to respond to the complaint that the Applicant is going to make against them. To this end, Mr Fernandez requires time to correspond with the former solicitor.

35 The flaw in the Applicant’s complaint is simply that he does not say what his previous counsel did or did not do in his defence. Without naming whom he is referring to, and without details of the alleged misconduct, a

statement that his former counsel did not act on his instructions is nothing more than a bare assertion. The fact that he has been convicted and sentenced to suffer death is not in itself an indication that his previous counsel had failed to act on his instruction in that he had mishandled his trial and CCA 29. The affidavits in the First and Second Applications shed no light on the alleged misconduct of his previous counsel.

36 As for the case of *Pannir*, I am of the view that it is clearly distinguishable. In *Pannir*, the applicant had acted promptly to lodge a complaint with the Law Society in respect of his previous solicitor's conduct long before he was scheduled for execution – he surfaced the complaint to his new lawyers on 6 September 2024 and the complaint to the Law Society was lodged on 24 October 2024 while his execution was scheduled for 20 February 2025. Next, there were detailed allegations of misconduct, such as the previous solicitor having (allegedly) pressured the applicant into signing a notice to act in person, refusing to represent the applicant only three days before a hearing, *etc* (*Pannir* at [48]). As a result, this court was satisfied that the applicant's complaint against his former solicitor in *Pannir* was clearly genuine.

37 In *Masoud (Stay)*, this court took the view that the filing of a complaint against former counsel on 11 November 2024 in respect of an execution scheduled for 29 November 2024 was late, and that the inference was that the complaint was an attempt to delay the carrying out of the sentence (at [70]). In the present case, the Applicant has simply expressed a wish to make a complaint against his former counsel.

38 In the circumstances, there is lack of genuineness in the Applicant's supposed grievance against his previous solicitor which has not even been articulated properly. This renders his intended complaint suspect. At this

juncture, it is apposite to repeat this court’s recent caution in *Muhammad Salleh bin Hamid v Public Prosecutor* [2025] SGCA 15 that “grave allegations against former counsel, which attack the reputation of counsel and the finality and integrity of the judicial process, should not be lightly made” (at [4]). The threshold to allege that counsel’s former conduct resulted in a miscarriage of justice in his conviction is high – counsel’s conduct must fall so clearly below an objective standard that it could be fairly described as flagrant or egregious incompetence or indifference (*Salleh* at [3]). On the other hand, if the Applicant is not intending to complain about his lawyer for the purposes of impugning his conviction, then this would not affect or undermine the integrity of the Applicant’s conviction and appeal in any aspect (*Masoud (Stay)* at [70]). For these reasons, I am of the view that the Intended Complaint Ground is entirely meritless (consideration (d) of s 60G(7) of the SCJA) and thus decline to grant permission to the Applicant to bring a PACC application on the basis of the Intended Complaint Ground.

The MDA Presumptions Ground

39 To examine this ground, it is necessary to examine the background to CA 2/2023 and SUM 6. This has been summarised in *Pannir* at [37] and I gratefully adopt the Court of Appeal’s summary.

Background to CA 2/2023 and SUM 6

40 CA 2/2023 arose from an application in HC/OA 480/2022 (“OA 480/2022”) by four claimants for permission to seek the following reliefs:

- (a) A declaration that the presumptions contained in ss 18(1) and 18(2) of the MDA should be read down and given effect as imposing an

evidential burden only in compliance with Arts 9(1) and 12(1) of the Constitution and the common law presumption of innocence.

(b) Alternatively, a declaration that the “presumption upon presumption” contained in s 18(2) read with s 18(1) of the MDA which were imposed upon the claimants is/are unconstitutional for violating Arts 9(1) and 12(1) of the Constitution.

(c) A prohibitory order against the execution of the death sentences upon the claimants.

41 Following the dismissal of OA 480/2022 by the General Division of the High Court on 25 November 2022 (*Jumaat bin Mohamed Sayed and others v Attorney-General* [2022] SGHC 291), the claimants appealed, in CA 2/2023, against this decision. CA 2/2023 was filed on 23 December; however, due to the claimants’ failure to comply with the timeline to file various relevant documents, CA 2/2023 was deemed withdrawn on 14 March 2023.

42 In response, the claimants filed CA/SUM 8/2023 (“SUM 8/2023”) on 31 March 2023 seeking the reinstatement of CA 2/2023 and an extension of time to file the relevant documents. SUM 8/2023 was dismissed by a single Judge of the Court of Appeal on 25 May 2023 (*Jumaat bin Mohamed Sayed and others v Attorney-General* [2023] 1 SLR 1437).

43 The claimants then applied *vide* SUM 16/2023, on 6 June 2023: (a) to set aside the order dismissing SUM 8/2023; (b) to reinstate CA 2/2023; and (c) for an extension of time to file the relevant documents. At a hearing on 23 January 2025, the Court of Appeal invited further submissions from the parties on various substantive issues, including the nature and status of the presumption of innocence and the compatibility of the presumptions in ss 17

and 18 of the Misuse of Drugs Act 1973 (2020 Rev Ed) with that presumption. SUM 16/2023 remains pending.

Applicant's submissions

44 I set out the thrust of the Applicant's submissions as to why CA 2/2023 and SUM 16/2023 will have a bearing on the Applicant's conviction and CCA 29:

- (a) SUM 16/2023 and CA 2/2023 may result in a finding that the ss 17 and 18 presumptions are unconstitutional.
- (b) The Judge “made both findings of actual and presumptive intent to traffic” in the Trial GD.
- (c) This “raises doubt as to what the operative standard of proof was in [the Judge's] mind when she determined that the Applicant's statements were more reliable than that of his testimony at trial. It could be either that [the Judge] took the view that the Applicant failed to prove his safekeeping defence *on the balance of probabilities* and in so doing found his statements to be more believable, or that he had failed to raise reasonable doubt regarding the admissions in the statements” [emphasis in original].
- (d) CCA 29 suffers from the same “defect” as the Trial GD “in making findings of both actual and presumptive intent to traffic”.
- (e) Due to the “ambiguity” in the findings of the Judge, it follows that a finding that the presumptions are unconstitutional may undermine the Applicant's conviction.

Analysis

45 I first consider whether the MDA Presumptions Ground has a reasonable prospect of success (consideration (d) of s 60G(7) of the SCJA). The starting point is that one possible outcome of CA 2/2023 (assuming SUM 16/2023 is allowed) is that the Court of Appeal may find the presumptions in ss 17 and 18 of the MDA to be unconstitutional (*Pannir* at [44]). However, the Applicant in the present case is *not* like the applicant in *Pannir* because the Applicant's conviction was not based on the presumption in s 17 of the MDA. There was a finding that the Applicant was guilty of trafficking and his guilt was proven beyond reasonable doubt without the use of the presumption under s 17(c) of the MDA. As we mentioned at [12] above, this finding is clear from the Trial GD at [46] and [49]. The Applicant's conviction was based essentially on his *admissions* in his statements, and his inability to explain coherently why his account at trial of safekeeping the drugs (this account only having been raised at the trial) should be preferred to the account in his statements (see above at [11]–[13]). The Applicant's conviction was upheld and the Court of Appeal affirmed the Judge's findings based on the Applicant's own evidence.

46 The Applicant's assertion that the Judge had been unclear in making findings of *both* actual knowledge and presumed knowledge is plainly based on a misunderstanding of the Judge's plain words (see [12] above). I agree with the respondent that there is no ambiguity as to what standard of proof the trial Judge had applied. The Judge clearly stated that the element of possession for the purposes of trafficking had been proven beyond a reasonable doubt. It was only *if* she was wrong, *ie*, that the element of possession for the purposes of trafficking had *not* been proven beyond a reasonable doubt, that she then considered the presumption and found that the Applicant had not rebutted the presumption. The two findings are clearly *not* contradictory, because the second

finding is only engaged *if* the first finding is wrong. I agree with the respondent that the Applicant's failure to rebut the presumption through the bailment defence was merely an alternative basis for the Applicant's conviction. This is the basic nature of an alternative case. The Applicant appears to misunderstand the concept of alternative cases, which is a point that I return to later on.

47 It is also clear that the Court of Appeal affirmed the Judge's primary finding that the element of possession for the purposes of trafficking had been proven beyond a reasonable doubt.

48 Since it is clear that the Judge did *not* in fact make findings of both actual knowledge and presumed knowledge, there is no confusion or alleged ambiguity as to the applicable standards of proof. It is well-established, and it was not disputed at trial or on appeal, that the Prosecution bears the burden of proving all the elements of an offence beyond a reasonable doubt. The Prosecution did discharge this burden in the Trial GD. Further, I agree with the respondent that, the mere fact that SUM 16/2023 and CA 2/2023 may raise questions as to the standard of proof required of the Prosecution where presumptions are relied upon, does not detract from the well-established standard of proof required in criminal cases, where presumptions are not relied upon. Even if the presumptions are "read-down", it would not affect the general position that in a criminal trial, the Prosecution must prove the offence beyond a reasonable doubt.

49 Therefore, I am of the view that the MDA Presumptions Ground is based on a fundamental misunderstanding of the Judge's grounds and is wholly without merit. I thus decline to grant permission for the Applicant to mount a PACC application on the MDA Presumptions Ground.

50 The question of delay (consideration (b) of s 60G(7) of the SCJA) is of a lesser concern given my views on consideration (d). However, for completeness, I make some observations as regards the question of whether there was a delay in the Applicant raising the MDA Presumptions Ground to justify a stay of execution. While the Applicant claims that he only knew about the potential impact of CA 2/2023 on his conviction when *Pannir* was decided on 19 February 2025, the question of whether the presumptions in s 18 of the MDA are compatible with the common law presumption of innocence were raised as early as 2 September 2022, when OA 480/2022 was filed. The questions were again ventilated on 11 July 2023, when Mr Theodoros Kassimatis KC applied for *ad-hoc* admission to the Singapore Bar to represent some of the applicants in CA 2/2023 by way of an originating application with a supporting affidavit (with Mr Edward Fitzgerald KC filing a separate application for *ad-hoc* admission, for case management reasons, on 11 August 2023). At the very least, the Applicant who was one of 36 inmates in various post-appeal applications would have heard about the claimants' new challenge to the constitutionality of presumptions in the MDA, whether or not specifically in relation to s 18 of the MDA or presumptions in MDA, generally.

51 Once the PACC Act came into force on 28 June 2024, it would have been open for the Applicant to make a PACC Application based on these arguments.

52 Ultimately, I make no determination on the merits of the Applicant's explanation for his delay in raising the arguments in the MDA Presumptions Ground. All I will say is that, if there was any basis to the MDA Presumptions Ground, any delay of such a nature would have less bearing on my decision on whether to grant him permission to bring a PACC Application based on this ground.

Inconsistency Ground

53 I now turn to the Inconsistency Ground. The Applicant argues that:

- (a) Generally, the Prosecution should not run inconsistent cases.
- (b) Likewise, it was unfair for the Applicant to have to “meet two different burdens of actual and presumptive knowledge”.

54 On its face, the main difficulty with the Applicant’s submission is that the element of knowledge of the nature of the drugs was not even in dispute at trial or on appeal (see [9]). If (b) is interpreted literally, I agree with the respondent that this would be sufficient to dispose of the Inconsistency Ground.

55 For completeness, if the Applicant is arguing that the Judge and the Court of Appeal should not have found *both* situations – that the element of possession for the purpose of trafficking had been proven beyond a reasonable doubt, and also that the presumption of possession for the purpose of trafficking had not been rebutted – then I have explained at [46] above why this is based on a misreading of the Trial GD.

56 For the sake of argument and taking the Applicant’s case at the highest, he appears to be saying that courts are generally precluded, as a matter of both logic and fairness, from accepting cases that are run in the alternative.

57 To begin with, the Applicant has selectively quoted from the case that he cited in support of this proposition. I reproduce the quote from *Gobi a/l Avedian v Public Prosecutor* [2020] SGCA 102 (“*Gobi*”) at [55] in full to show how the Applicant has deliberately left out a sentence that undermines his argument:

55 Second, keeping the two inquiries separate and distinct is important in order to ensure that an accused person knows the case he has to meet. *This goes towards the importance of ensuring procedural fairness in criminal proceedings, a point we recently reiterated in Public Prosecutor v Aishamudin bin Jamaludin [2020] SGCA 70 at [59]. An accused person should not be placed in the position of having to run a potentially inconsistent defence in an attempt to address undifferentiated allegations of both actual knowledge and wilful blindness. Without expressing a conclusive view, it seems to us that while it may be possible in principle for the Prosecution to run alternative cases of actual knowledge and wilful blindness, subject to there being no prejudice to the accused person, this is quite distinct from the position that obtains where the two inquiries are conflated into a single aggregated one.* We leave this issue open for determination in a future case because, as we explain below, we are satisfied that the Prosecution did not run alternative cases against the Applicant at the trial.

[emphasis added]

58 The Applicant cites the italicised portion for the proposition that he cannot be expected to meet inconsistent alternative cases. That is not quite what this court said in the quote above. The underlined portion, which was omitted from the Applicant's submissions, makes clear that alternative cases *are* permissible as long as the inquiries under each are kept distinct. The Applicant seems to either misunderstand, or refuse to understand, the concept of alternative cases, perhaps as a way to escape the implications of the Judge's clearly-worded findings in the Trial GD.

59 Similarly, the case of *Chong Hoon Cheong v Public Prosecutor* [2022] SGCA 50 ("*Chong Hoon Cheong*") also does not stand for the proposition that the Prosecution cannot run a primary case and an alternative case. The problem in *Chong Hoon Cheong* was not that the Prosecution had run alternative cases *per se*, but rather, that the Prosecution had run its primary case in a particular way – *ie*, that the Prosecution had contended that the appellant admitted in his statements that the drugs were for the purpose of trafficking based on his

statements alone and to the exclusion of the other evidence (*Chong Hoon Cheong* at [64]). The error in that case was with what the judge was taken to have said. Having held that there was a reasonable doubt as to the appellant's guilt, the appellant ought to have been acquitted (*Chong Hoon Cheong* at [62]); instead, the judge went on to convict the appellant under s 17 (c) of MDA. On appeal, the Court of Appeal disagreed with the judge on the evidence that there was reasonable doubt as to the appellant's guilt (*Chong Hoon Cheong* at [62]).

60 In any event, in the Applicant's case, while the Prosecution sought two alternative *legal means* of convicting the Applicant at trial (*ie*, proving the disputed element beyond a reasonable doubt, or proving the disputed element via a presumption), the overall *case* advanced under each of the two legal means was *identical*. At risk of repetition, the Applicant's possession of the Drugs and knowledge of the nature of the Drugs were not disputed and furthermore, the Applicant admitted to his role in trafficking drugs in his statements. Whether or not the Prosecution sought to prove possession for the purposes of trafficking beyond a reasonable doubt, or rely on the presumption in the MDA to prove possession for the purposes of trafficking, the factual case that the Applicant had to meet was identical – he sought to explain why his account at trial of a bailment defence which was raised for the first time ought to be believed over the account in his statements. Therefore, the concern raised by this court in the quote from *Gobi* did not even arise in the Applicant's trial – there was no question of him having to run a (factually) inconsistent defence because only one factual case was run against him, and he only ran one factual defence against that single factual case (the bailment defence).

61 From the above, I am satisfied that the Inconsistency Ground is entirely contrived (consideration (d) of s 60G(7) of the SCJA) and I have no hesitation in rejecting it as a basis for a PACC application.

62 In any event, and for completeness, since the Applicant’s complaint in the Inconsistency Ground is essentially that the Prosecution was running inconsistent cases against him (and bears no relation to the MDA presumptions), he could and should have raised this at trial or in his appeal (consideration (a) of s 60G(7) of the SCJA). I further note that this observation also applies to the MDA Presumptions Ground – if there was indeed an alleged ambiguity as to the basis on which the Applicant was convicted (*ie*, either direct proof of the contested element versus a reliance on the presumption of that element), this could and should have been ventilated in CCA 29. There is no explanation as to why he did not do so in relation to both of these complaints (consideration (b)).

Conclusion

63 I reiterate this court’s observations that “actions brought at an eleventh hour and without merit in fact and/or law could lead to the inference that they were filed not with a genuine intention to seek relief, but as a ‘stopgap’ measure to delay the carrying out of a sentence imposed on an offender” (*Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 at [41]; *Nagaenthran a/l K Dharmalingam v Attorney-General and another matter* [2022] SGCA 26 at [65]). Many of the grounds above could have been raised much earlier than on the eve of the Applicant’s execution.

64 For the above reasons, I decline permission for the Applicant to bring the PACC applications contemplated in both the First and Second Applications. Thus, I summarily dismiss the First and Second Applications without the need for an oral hearing pursuant to s 60G(8) of the SCJA.

Belinda Ang Saw Ean
Justice of the Court of Appeal

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