Pannir Selvam a/l Pranthaman *v* Attorney-General
[2019] SGHC 217

Case Number	: Originating Summons No 807 of 2019 (Summons Nos 3167 and 3764 of 2019)
Decision Date	: 17 September 2019
Tribunal/Court	: High Court
Coram	: See Kee Oon J
Counsel Name(s)	: Too Xing Ji and Lee Ji En (BMS Law LLC) for the applicant; Ng Yong Kiat, Francis SC, Adrian Loo Yu Hao and Jarret Huang Jinghao (Attorney-General's Chambers) for the respondent in SUM 3167/2019 and Ng Yong Kiat, Francis SC, Adrian Loo Yu Hao and Sunil Nair (Attorney-General's Chambers) for the respondent in SUM 3764/2019.
Parties	: Pannir Selvam a/l Pranthaman — Attorney-General

Administrative Law – Judicial review

Civil Procedure – Discovery of documents – Application

Civil Procedure – Appeals – Leave

17 September 2019

See Kee Oon J:

Introduction

1 Summons No 3167 of 2019 ("SUM 3167/2019") and Summons No 3764 of 2019 ("SUM 3764/2019") arose from an application for leave to commence judicial review proceedings in Originating Summons No 807 of 2019 ("OS 807/2019").

2 In SUM 3167/2019, which was heard on 19 July 2019, the applicant sought discovery of documents and leave to serve interrogatories against the Government, represented by the Attorney-General ("the AG"). After hearing the parties, I dismissed the application.

3 In SUM 3764/2019, which was heard on 19 August 2019, the applicant sought leave to appeal against my decision in SUM 3167/2019. Having heard the parties, I declined to grant leave to appeal. The hearing of OS 807/2019 was adjourned to a date to be fixed in view of the applicant's expressed intention to apply to the Court of Appeal for leave to appeal.

4 Brief oral remarks were made before I dismissed both applications. In these grounds of decision, I set out my reasons in full.

Facts

Background

5 The applicant was convicted by the High Court on 2 May 2017 on a capital charge of importing not less than 51.84g of diamorphine into Singapore, an offence under s 7 of the Misuse of Drugs Act

(Cap 185, 2008 Rev Ed) ("MDA"), punishable under s 33 of the MDA. The trial judge found that the applicant was a "courier" within the meaning of s 33B of the MDA, but was informed by the Prosecution that the Public Prosecutor ("the PP") would not be certifying that the applicant had rendered substantive assistance under s 33B(2)(*b*) of the MDA. Accordingly, the trial judge passed the mandatory death sentence on the applicant. The applicant appealed against his conviction.

6 On 9 February 2018, the Court of Appeal dismissed his appeal. Thereafter, the applicant, his siblings, their parents, and the applicant's then-counsel, Mr Eugene Thuraisingam, submitted petitions for clemency to the President. [note: 1]

7 On 17 May 2019, the applicant and his next-of-kin were notified, through letters issued by the President's Office, that the President had declined to exercise her power under Art 22P(1) of the Constitution of the Republic of Singapore (1999 Reprint) ("the Constitution") to grant clemency to the applicant, and that the sentence of death would stand. [note: 2] On that same day, the applicant's next-of-kin also received letters from the Singapore Prison Service ("SPS") informing them that the death sentence passed on the applicant would be carried out on 24 May 2019. [note: 3]

Procedural history

8 On 21 May 2019, the applicant filed Criminal Motion No 6 of 2019 to the Court of Appeal, seeking a stay of his scheduled execution, on the basis that he intended to challenge the rejection of his clemency petition and the PP's refusal to issue a certificate of substantive assistance. [note: 4]

9 The Court of Appeal heard the matter on 23 May 2019 and granted the applicant a stay of execution for him to file his intended application to challenge the execution of his sentence of death. [note: 5] The applicant was directed to file his intended application, as well as any supporting evidence by 6 June 2019.

10 After applying for and obtaining several extensions of time, the applicant filed OS 807/2019 as well as a statement under O 53 r 1(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") on 24 June 2019.

11 The next day, on 25 June 2019, the applicant brought SUM 3167/2019 for specific discovery and leave to serve interrogatories against the Government, represented by the AG.

SUM 3167/2019

12 The applicant's case in OS 807/2019 consisted of a series of challenges against the PP, the SPS, the Cabinet and the President. For completeness, I note that after my decision on SUM 3167/2019 was rendered on 19 July 2019, the applicant confirmed on 19 August 2019 that he was withdrawing his application for leave to commence judicial review to seek a Quashing Order in respect of the President's Order (refusing clemency). [note: 6] This was on the basis that the President's Order was no longer of any effect. I granted leave for withdrawal accordingly. [note: 7] My decisions in both summonses were, however, not affected by this.

13 In the main proceedings, OS 807/2019, the applicant's written submissions contended that, *inter alia*:

(a) he was not served with the Mandatory Death Penalty ("MDP") Notice at the time of his arrest, which resulted in him not being given notice that he could "save his life by providing

substantive assistance when he was arrested"; [note: 8]

(b) following the dismissal of the applicant's appeal, the applicant had provided information to the PP that should have been considered as sufficient for the purposes of obtaining a certificate of substantive assistance; [note: 9] and

(c) he had provided information to the PP that assisted the Central Narcotics Bureau ("CNB") in investigating and arresting Zamri bin Mohd Tahir ("Zamri"), a drug trafficker, which should have been sufficient for the purposes of obtaining a certificate of substantive assistance. [note: 10]

14 It was for these reasons that the applicant originally sought specific discovery of the following three items, when he filed SUM 3167/2019 for discovery and interrogatories on 25 June 2019: [note: 11]

(a) the MDP Notice that was purportedly read to and signed by the applicant at the time of arrest;

(b) the applicant's signed statement as recorded by Investigating Officer Neo Zhan Wei ("IO Neo") on or about 24 September 2018 when the latter went to Changi Prison ("the 24 September 2018 report"); and

(c) documents in relation to Zamri's phone number, consisting of the request for subscriber's particulars of mobile number +65XXXXX012 and the call trace report for mobile number +65XXXXX012 ("Zamri's phone number documents").

15 The interrogatories sought by the applicant, on the other hand, were primarily concerned with the clemency process, and were directed at the President's Office, the AG, and the Cabinet. They consisted of: [note: 12]

(a) Questions on the post-dating of letters by the President's Office:

(i) When did the AG issue his opinion under Art 22P of the Constitution?

(ii) When did the Cabinet receive the reports and the AG's opinion under Art 22P(2) of the Constitution?

(iii) When did the Cabinet decide that the law should be allowed to take its course in relation to the applicant?

(iv) When did the Cabinet inform the President of their advice?

(v) Why did the President's Office decide to post-date the three letters from 7 May 2019 to 17 May 2019?

(b) Question on whether the procedural requirements under Art 22P of the Constitution had been satisfied:

(i) Did the AG's opinion under Article 22P(2) of the Constitution take into consideration:

(A) the information provided and the applicant's further statement recorded from his

interviews with IO Neo on 20 August 2018 and 24 September 2018 respectively;

(B) the applicant's parents' petition for clemency dated 25 October 2018;

(C) the applicant's siblings' petition for clemency dated 25 October 2018;

(D) the applicant's petition for clemency dated 10 November 2018;

(E) the representations sent by the applicant's previous lawyers, M/s Eugene Thuraisingam LLP, dated 20 February 2019; and

(F) the petition for clemency sent by the applicant's previous lawyers, M/s Eugene Thuraisingam LLP, dated 26 February 2019.

16 By the date of the hearing, however, the applicant was no longer requesting for specific discovery of the MDP Notice; on 2 July 2019, counsel for the applicant was granted the opportunity to, and did inspect the MDP Notice at the AG's office. The MDP Notice was also exhibited in one of the reply affidavits to OS 807/2019 filed on behalf of the AG, on 1 July 2019. [note: 13]

17 In the same vein, the applicant's interrogatory that concerned the issue of post-dating of letters by the President's Office (see [15(a)(v)] above), had been answered in the affidavits of Lee Kah Chong Benny and Toh Gek Choo. [note: 14] Counsel for the applicant thus no longer pursued that question.

Issues to be determined

18 There were three key issues that arose before me in SUM 3167/2019. First, whether discovery may be allowed in judicial review proceedings. Secondly, assuming that discovery may be allowed, the stage at which discovery applications are to be made. Thirdly, assuming that discovery may be allowed and the application was properly brought, whether the present applications ought to be granted.

19 There was also a preliminary point concerning whether, procedurally, s 34(1) of the Government Proceedings Act (Cap 121, 1985 Rev Ed) ("GPA") applied to preclude any order for discovery in SUM 3167/2019 as the Government was not yet a party to civil proceedings.

Section 34(1) of the GPA

20 Section 34(1) of the GPA states:

> Subject to and in accordance with Rules of Court —
>
> (a) in *any civil proceedings in the High Court or a State Court to which the Government is a party*, the Government may be required by the court to make discovery of documents and produce documents for inspection; and
>
> (b) in any such proceedings as aforesaid, the Government may be required by the court to answer interrogatories …
>
> …

[emphasis added]

21 The phrase "civil proceedings" is in turn defined under s 2(2) of the GPA as:

> proceedings of whatever kind of a civil nature before a court and includes proceedings for judicial review and recovery of fines and penalties and *an application at any stage of a proceeding* … [emphasis added]

22 The effect of s 34(1) of the GPA, according to the AG, is that the Government may only be required to make discovery of documents or answer interrogatories once it is a party to civil proceedings in the High Court or a State Court. As leave for judicial review has yet to be granted in OS 807/2019, the Government is not yet a party to civil proceedings and discovery may not be ordered against it. Section 34(1) of the GPA should also be read in accordance with s 54 of the Interpretation Act (Cap 1, 2002 Rev Ed) ("IA"), which provides that "[n]o Act shall in any manner whatsoever affect the rights of the Government unless it is therein expressly provided, or unless it appears by necessary implication, that the Government is bound thereby".

23 The applicant, however, submitted that the Government should be considered as a proper party to OS 807/2019, and that s 34(1) of the GPA should not apply to bar his summons for discovery. [note: 15] It was argued that under a plain reading of ss 2(2) and 34 of the GPA, the present summons was a civil proceeding to which the Government is a respondent, as the Summons constitutes an application "at any stage of a proceeding". [note: 16] The applicant also took the position that, while the making of leave applications for judicial review under O 53 r 1 ROC is *ex parte*, the Government should nevertheless be considered a party to the proceedings. Reliance was placed on the High Court decision of *Chan Hiang Leng Colin and others v Minister for Information and the Arts* [1995] 2 SLR(R) 627 ("*Colin Chan*") at [4], where Judith Prakash J (as she then was), cited an excerpt from the Malaysian case of *George John v Goh Eng Wah Brothers Filem Sdn Bhd* [1988] 1 MLJ 319 ("*George John*") at 320 where Lim Beng Choon J stated that "an *ex parte* application merely means that such an application is permitted to be made by one party in the absence of the other".

24 In my view, the applicant's contention that the Government was already a party to civil proceedings was flawed. SUM 3167/2019 could not be considered in a vacuum. It had to be seen in the proper context, namely that it had arisen in relation to the main proceedings, OS 807/2019, in which the applicant has yet to obtain leave to commence judicial review.

25 Under O 53 r 1(2) and O 53 r 1(3) of the ROC, an application for leave for a Mandatory Order, Prohibiting Order or Quashing Order must be made by *ex parte* originating summons and served on the AG's Chambers. As noted by the Court of Appeal in *Deepak Sharma v Law Society of Singapore* [2017] 2 SLR 672 at [31] and [34], the purpose of this is to allow the AG to ascertain if his participation, as the guardian of public interest, is warranted. At this stage, the AG is merely to be considered a nominal party in the judicial review application, with his appearance being a matter of his discretion.

26 In addition, the decision of *Colin Chan*, on which the applicant relies, does not stand for the expansive proposition that the Government becomes a party to civil proceedings once an application for leave is filed. Lim J's remarks in *George John*, which were affirmed by Prakash J in *Colin Chan*, should be properly understood as serving to reinforce the point that an *ex parte* application does not bar a person with legitimate grievances from appearing against or in support of the application (see *Colin Chan* at [4]; *George John* at 320).

27 Pertinently, Lim J also proceeded to note that, at hearings for an application for leave to

commence judicial review, it is "essential that the Attorney General should be given an opportunity to intervene … if there is good ground for him to do so in the interest of the government in particular and the public in general". This too, supports the position that the Government, which is represented by the AG, remains a nominal party at the leave stage, and is not yet a party to civil proceedings.

28 That the Government does not become a party to civil proceedings at the leave stage is further supported by the High Court's decision in *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [15]–[18], where Tay Yong Kwang J (as he then was) took the position, which I respectfully adopt, that the mere service of cause papers on the AG does not suffice to render him a party to the proceedings.

29 The applicant, however, presented an alternative argument: even if the Government were not a party to proceedings, the court nevertheless had inherent jurisdiction to order the disclosure of documents where necessary to prevent injustice. It was argued that Sundaresh Menon JC (as he then was), in *UMCI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd and others* [2006] 4 SLR(R) 95 ("*UMCI*") had ruled that had discovery been unavailable in that case, "he would have exercised inherent jurisdiction to make the necessary orders". [note: 17]

30 However, in reaching his decision, Menon JC did not have any occasion to consider s 34 of the GPA, nor was s 34 raised in arguments given that neither of the parties were government bodies. In *UMCI* at [12], Menon JC considered whether the court possessed the inherent jurisdiction to make an order for discovery against a non-party. In deciding that the court had the inherent jurisdiction to make an order for discovery against a non-party for certain documentary samples, Menon JC provided some helpful guidance for the court's exercise of its inherent powers. At [96], Menon JC stated:

> … I consider that the court's inherent jurisdiction may be resorted to, to make orders that are reasonably necessary in order for justice to be done in a case or to prevent any abuse of the process of the court. In particular, this extends to the power to make suitable orders and directions that are reasonably required to prepare the way for a just and proper trial of the issues between the parties and for evidence to be gathered. …

31 In my view, the applicant could not rely on Menon JC's broad pronouncements on the need to do justice to justify what he sought in the present application. To do so would conveniently gloss over the fact that due regard ought to be given in this case to s 34 of the GPA.

32 First, as a point of clarification, the applicant's references to "inherent jurisdiction" in his submissions were actually properly seen as references to "inherent power". As made clear by the Court of Appeal in *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 ("*Re Nalpon Zero*") at [34], 'the so-called inherent jurisdiction of the court is in fact no more than the exercise by the court of its fund of powers conferred on it by virtue of its institutional role to dispense justice, rather than an inherent "authority" to hear and determine a matter'.

33 Secondly, it would be inappropriate for the court to exercise its inherent powers in the present circumstances. Useful guidance as to the ambit of the court's inherent powers was provided by Andrew Phang Boon Leong J (as he then was) at [81] of *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 117 ("*Wellmix*"):

> The parameters of O 92 r 4 are, understandably, not particularly precise. What does appear clear is that if there is an existing rule (whether by way of statute or subsidiary legislation or rule of court) already covering the situation at hand, the courts would generally *not* invoke its inherent powers under O 92 r 4, save perhaps in the most exceptional circumstances ... [i]t is

commonsensical that O 92 r 4 was not intended to allow the courts *carte blanche* to devise any procedural remedy they think fit. …

34 Phang J's observation in *Wellmix* was subsequently affirmed by the Court of Appeal in *Re Nalpon Zero* at [39].

35 Given that there are clear limits stipulated in s 34 of the GPA and s 54 of the IA, the court should not exercise its inherent powers to circumvent these legislative provisions by granting the applicant's request for discovery and leave to serve interrogatories.

36 Following from my determination that the Government, represented by the AG, is not yet a party to the civil proceedings, s 34(1) of the GPA applied to preclude any potential order for discovery. However, taking the applicant's case at its highest and assuming that I could have been mistaken on this point, I proceeded to consider the applicant's remaining arguments before addressing the substantive merits of the application.

Whether discovery may be allowed in judicial review proceedings

37 It was common ground between the parties that the process of discovery under O 24 of the ROC is available in judicial review proceedings. I agreed with this proposition, especially upon considering Philip Pillai J's observation in *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 147 ("*Susan Lim*") at [4], that the text of O 24 r 1 ROC is "unqualified in its application" to any party to a cause or matter. Order 24 r 1 states:

> Subject to this Rule and Rules 2 and 7, the Court may at any time order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to give discovery by making and serving on any other party a list of the documents which are or have been in his possession, custody or power, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

38 The scope for discovery in judicial review proceedings, however, is more restricted compared to typical civil proceedings. This stems from the fact that applications for judicial review typically only raise issues of law, rather than issues of fact, which renders the disclosure of documents unnecessary. As eloquently expressed by Lord Bingham in *Tweed v Parades Commission for Northern Ireland* [2007] 1 AC 650 ("*Tweed*") at [2]:

> … But the process of disclosure can be costly, time-consuming, oppressive and unnecessary, and neither in Northern Ireland nor in England and Wales have the general rules governing disclosure been applied to applications for judicial review. *Such applications, characteristically, raise an issue of law*, the facts being common ground or relevant only to show how the issue arises. So *disclosure of documents has usually been regarded as unnecessary and that remains the position*. [emphasis added]

39 Lord Bingham's pronouncement in *Tweed* was affirmed by Pillai J in *Susan Lim* at [7]. Similar pronouncements of the law may be found in *Chu Woan-Chyi and others v Director of Immigration* [2009] 6 HKC 77 ("*Chu*") and *Rekapacific Bhd v Securities Commission and another and other appeals* [2005] 2 MLJ 269 ("*Rekapacific*").

40 In *Chu*, the Hong Kong Court of Appeal noted at [14(3)] that in judicial review proceedings, in general, "discovery is indeed much more limited than in normal private law litigation", typically because "the factual issues in any given case are often limited" [emphasis omitted].

41 Similarly, in *Rekapacific* at [10]–[11], the Malaysian Court of Appeal emphasised the need for restraint "when dealing with applications for … interlocutory reliefs in the course of an application for judicial review". Specifically, the Malaysian Court of Appeal affirmed the pronouncement of Lord Scarman in *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 654, that:

> … Upon general principles, discovery should not be ordered unless and until the court is satisfied that the evidence reveals reasonable grounds for believing that there has been a breach of public duty; and it should be limited strictly to documents relevant to the issue which emerges from the affidavits.

42 The applicant, however, sought to draw another arrow from his quiver. In arguing that the approach in judicial review proceedings was not as restrictive as the AG suggested, he emphasised that there had been a number of cases decided in foreign jurisdictions where discovery applications were granted. Reference was made to the aforementioned decision of *Chu*, as well as *Tweed*, which had been cited in *Susan Lim*. [note: 18]

43 The applicant's submissions on this point, however, ignored the fact that both holdings in *Chu* and *Tweed* were made in the context of an application at the substantive stage of the proceedings, *ie*, after leave for judicial review had already been granted.

44 This was an important distinction, as the threshold requirement of leave serves as a means of filtering out groundless or hopeless cases at an early stage, in order to minimise wastage of the court's time and protect public bodies from harassment (see *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133 at [23]). The courts in those cases, having already been satisfied that the applicants possessed a *prima facie* case for judicial review, might presumptively have been more willing to grant the said applicants' discovery applications. Moreover, a key reason behind the foreign courts' willingness to order discovery after leave for judicial review has been granted lies in the duty of candour on the part of the government, but that duty only arises "once leave has been obtained by an applicant to commence judicial review proceedings. This is a recognition that an applicant must have proper grounds before commencing such proceedings and cannot simply rely on the existence of the duty of candour to 'fish' for a case" (see [14(1)] of *Chu*).

45 I was thus not convinced by the applicant's submission that the scope for discovery in judicial review proceedings was not more circumscribed than that in typical civil proceedings.

46 In any case, the applicant's contention raised an additional issue that fell to be dealt with in the next section – the appropriate stage at which a discovery application ought to be brought.

Stage at which discovery applications ought to be brought

47 It was argued by the AG that discovery applications should only be brought after leave is granted to commence judicial review against the Government.

48 In contrast, the applicant took the position that discovery was available even before the court grants leave. Reliance was placed on two points: first, that the legislature in Singapore, in contrast to other jurisdictions, failed to expressly legislate that discovery was only available after leave had been granted; and secondly, that in the decisions of *Susan Lim*, as well as *AXY and others v Comptroller of Income Tax* [2016] 1 SLR 616 ("*AXY*"), the court was "willing to entertain" the idea of ordering discovery even at the leave stage. [note: 19]

49 I was of the view that the applicant's first argument was of little merit. The absence of legislation specifically providing for a stage at which a discovery application may be made does not necessarily mean that it may be made at any stage.

50 As for the applicant's second argument, I noted first that in the decisions of *Susan Lim* and *AXY*, no mention was made of the stage at which an application for discovery in judicial review ought to be made; nor was there any mention of s 34(1) of the GPA or s 54 of the IA, which ought to be considered when dealing with discovery applications against the Government.

51 In *Susan Lim*, Pillai J, before making some observations on the state of discovery applications in the context of judicial review proceedings, had expressly noted at [4] that "[n]either party addressed me on whether discovery is in principle available in these judicial review proceedings". It thus appears that in *Susan Lim*, the parties confined their submissions to the merits of the discovery application before Pillai J. The usefulness of *Susan Lim* in this regard was hence limited.

52 In *AXY*, Edmund Leow JC directly addressed the question of whether a discovery application ought to be granted at the leave stage. Leow JC decided in the affirmative at [23], reasoning that the disclosure of certain documents was necessary for the court to determine whether the applicants were able to satisfy the requirement of a *prima facie* case against the Comptroller of Income Tax at the leave stage.

53 With respect, no authority was cited by Leow JC in support of his decision on this point. Given the lack of references to s 34 of the GPA, s 54 of the IA, or any case law on the applicable stage at which a discovery application may be made, it appeared to me that Leow JC did not have the benefit of parties' submissions on this point. He therefore may not have had a full opportunity to consider the applicability of these provisions, or to refer to any other relevant case authorities against allowing discovery applications at the leave stage.

54 I was thus of the view that neither *Susan Lim* nor *AXY* could stand for the proposition that discovery applications could be made at any stage of judicial review proceedings. Instead, I held that an application for discovery would only be properly made after leave had been granted.

55 This accords with the aforementioned rationale of having the leave stage in judicial review proceedings in place to filter out groundless and unmeritorious applications (see above at [44]). It would make little sense if the Government could be subjected to potentially frivolous applications for discovery even before a *prima facie* case were made out.

Whether discovery and interrogatories should be allowed in the present case

56 Following from my decision that a summons for discovery should only be brought after the leave stage, the applicant's case necessarily failed. I nevertheless considered whether, on the substantive merits of the applicant's case, his application for discovery and leave to serve interrogatories ought to be granted.

Discovery

57 Under O 24 r 5 of the ROC, which governs applications for specific discovery, an applicant has to show *prima facie* that (see *Susan Lim* at [5]):

(a) the documents sought were or are in the other party's possession, custody or power;

(b) the particular documents are relevant; and

(c) discovery is necessary either for disposing fairly of the matter or for saving costs.

58 The two points in contention in the present case were those of relevance and necessity, both of which had to be assessed having regard to the parties' pleaded cases.

59 As stated earlier at [14], the applicant sought specific discovery of both the 24 September 2018 report and Zamri's phone number documents.

60 The determination of a document's relevance is done with reference to the parties' pleadings; where an allegation is not pleaded, seeking discovery of a document to back up such an allegation constitutes fishing (see *Tan Chin Seng and others v Raffles Town Club Pte Ltd* [2002] 2 SLR(R) 465 at [19]). In deciding on the relevance of a particular document, the court must arrive at an informed view as to whether the document in question may reasonably be expected to assist in proving or disproving a fact in issue (see *Management Corporation Strata Title Plan No 2297 v Seasons Park Ltd* [2004] SGHC 142 at [14]–[15]).

61 The criteria of necessity, on the other hand, is embodied in O 24 r 7 of the ROC, which states that a Court shall refuse to make an order for discovery where "discovery is not necessary either for disposing fairly of the cause or matter or for saving costs".

62 I was of the view that the documents that the applicant sought were neither relevant nor necessary. The applicant argued that the production of the 24 September 2018 report was necessary to evaluate "IO Neo's bare assertion that the information was useless", and to "determine for which investigation the statement had been recorded under". [note: 20]

63 The key problem arising from the applicant's contention is that the latest time at which an accused may provide information for the purposes of obtaining a certificate of substantive assistance is during the trial itself (see *Muhamamd bin Abdullah v PP and another appeal* [2017] 1 SLR 427 ("*Abdullah*") at [59]). The Court of Appeal in *Abdullah* had made clear that if the accused "withholds all or some information before and/or during the trial, he cannot fault anybody if the PP decides not to issue the Certificate when the time comes for the trial court to consider the issue of sentence". The death sentence was passed on the accused by the High Court on 2 May 2017 (see above at [5]), and so any information given afterwards, including the 24 September 2018 report, should not be considered for the purposes of issuing a certificate of substantive assistance. It would hence be clearly unnecessary to disclose the said documents for the purpose of disposing fairly of OS 807/2019; the documents were also irrelevant given that they would not be taken into consideration.

64 Similarly, Zamri's phone number documents were plainly irrelevant and unnecessary. It appeared to me that the applicant's key contention regarding Zamri was that the information that he had provided to the CNB in relation to Zamri's phone number should have constituted substantial assistance. Given that the reply affidavits filed on behalf of the AG on 3 July 2019 did not challenge Zamri's evidence that he was indeed using the phone number the applicant claimed, [note: 21] it is difficult to see the necessity of adducing additional documents just to confirm this fact.

65 Additionally, even if I were to accept that there was some ambiguity as to whether Zamri was using the phone number the applicant claimed he was using, there is little reason why a call trace report was required when the subscriber's particulars of mobile number +65XXXXX012 (which was purportedly Zamri's phone number) alone would have revealed Zamri's identity. As stated by Belinda Ang J in *Bayerische Hypo- und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd and other*

applications [2004] 4 SLR(R) 39 at [38], the wider the range of documents requested, the more difficult it is for the court to decide that the documents are necessary for disposing fairly of the matter or cause.

Interrogatories

66 Under O 26 r 1 of the ROC, interrogatories may be served in order to dispose fairly of the cause or matter, or for saving costs. The court has, however, warned that interrogatories should not be used to "raid the cupboards" of opposing parties in order to "see whether they could find anything useful there for their case" (see *Wright Norman and another v Oversea-Chinese Banking Corp Ltd and another appeal* [1992] 2 SLR(R) 452 at [16]).

67 As noted in *Singapore Civil Procedure 2019* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 9th Ed, 2019) at para 26/4/10, "fishing interrogatories" are not a proper use of the interrogatories procedure. For instance, as stated in *Oversea-Chinese Banking Corp Ltd v Wright Norman and others* [1989] 1 SLR(R) 551 at [14], in the context of negligence, a failure to particularise any specific instances of negligence renders an applicant unable to interrogate.

68 In the present case, the applicant's interrogatories, which seek to impugn the clemency process without offering any particulars apart from allegations that the Cabinet *may* not have taken all relevant considerations into account when advising the President, or that the AG failed to take into account relevant material such as the information that the applicant offered and his family members' petitions for clemency, amount to mere fishing expeditions. These are wholly speculative and cannot justify the granting of leave for interrogatories.

69 For the reasons above, I dismissed the applicant's application for discovery and leave to serve interrogatories.

SUM 3764/2019

70 Subsequently, the applicant applied for leave to appeal against my decision in SUM 3167/2019. This formed the subject of SUM 3764/2019. To be clear, the application for leave related only to the dismissal of the application for discovery. It was common ground that the applicant could not seek leave to appeal in respect of the dismissal of his application for leave to serve interrogatories, in view of the prohibition in s 34(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) read with paragraph (*i*) of the Fourth Schedule thereto.

71 In arguing that leave to appeal ought to be granted, the applicant raised a total of seven questions, all of which purportedly amounted to questions of general principle decided for the first time and/or questions of importance upon which further argument would be to the public advantage. The seven questions were as follows: [note: 22]

(a) Whether specific discovery under O 24 r 5 of the ROC is available at the leave stage of judicial review proceedings against the AG and/or the respondent named in the *ex parte* originating summons for leave to commence judicial review proceedings? ("Question 1")

(b) Whether the AG and/or the named respondent is a party at the leave stage of judicial review proceedings for the purposes of O 24 r 5 of the ROC and s 34 of the GPA? ("Question 2")

(c) If not, when do the AG and/or the named respondent become a party for the purposes of O 24 r 5 of the ROC and s 34 of the GPA? ("Question 3")

(d) Whether "an application for discovery at the leave stage of judicial review proceedings" falls within the meaning of "an application at any stage of a proceeding" under the interpretation of "civil proceedings" under s 2(2) of the GPA? ("Question 4")

(e) Whether the AG and/or the named respondent can be subject to O 24 r 10 of the ROC and yet not be subject to O 24 r 5 of the ROC at the leave stage of judicial review proceedings? ("Question 5")

(f) Whether discovery is more restricted in judicial review proceedings, both at the leave stage and at the merits stage, and if so, what is the test to be applied at each stage? ("Question 6")

(g) Even if discovery under O 24 r 5 of the ROC is not available against the AG and/or the named respondent at the leave stage of judicial review proceedings, can the Court exercise its inherent jurisdiction to order disclosure of documents; and if so, what is the test to be applied? ("Question 7")

72 The AG took the position that SUM 3764/2019 should be dismissed on the basis that the applicant did not have a real interest in the outcome of the appeal, as he was seeking leave to appeal only in relation to questions of law and had not correspondingly sought leave to appeal specifically in relation to my dismissal of SUM 3167/2019 on the merits. [note: 23] In the alternative, the AG argued that if the court was minded to grant leave to appeal, leave should be granted only in relation to Question 1.

73 In oral submissions, the applicant claimed that the AG's position was unsustainable. He argued that leave to appeal against the entire order made in SUM 3167/2019 ought to be granted even if leave to appeal in relation to the *merits* was not specifically sought; reliance was placed on the decision of *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Tang Liang Hong*"). [note: 24]

Issues to be determined

74 After reviewing the parties' arguments, I found that there were two key issues in SUM 3764/2019:

(a) the applicable principles governing the grant of leave to appeal; and

(b) whether the applicant could obtain leave to appeal in the present circumstances despite not making explicit from the outset his intent to challenge my decision on the merits of his application.

Principles governing the grant of leave to appeal

75 The principles governing the grant of leave to appeal are clear. There are three limbs that a party can rely upon when seeking leave to appeal (see *Tang Liang Hong* at [16]; *Virtual Map (Singapore) Pte Ltd v Singapore Land Authority and another application* [2009] 2 SLR(R) 558 at [32]):

(a) a *prima facie* case of error;

(b) question of general principle decided for the first time; and

(c) question of importance upon which further argument and a decision of a higher tribunal

would be to the public advantage.

76 The three limbs possess a common thread: that to deny leave in such circumstances may conceivably result in a miscarriage of justice (see *Tang Liang Hong* at [15]). The applicant sought to rely only on the second and third limbs in respect of the seven questions that he raised. [note: 25]

Whether leave to appeal should be granted

Whether a live issue was present

77 Before addressing whether the seven questions that the applicant raised satisfied any of the limbs in *Tang Liang Hong*, I found it apposite to consider the AG's submission that leave to appeal should be denied as there were no longer any live issues – the questions of law that the applicant raised did not relate to his real interest which was essentially to obtain the documents sought by way of discovery in SUM 3167/2019.

78 It is not uncommon for the Court of Appeal to decline to hear arguments on the basis that they do not relate to a live issue before the court. This is so even in matters of judicial review (see *Prabagaran a/l Srivijayan v PP and other matters* [2017] 1 SLR 173 at [98]).

79 The rationale for this was explained in *AG v Joo Yee Construction Pte Ltd (in liquidation)* [1992] 2 SLR(R) 165 ("*Joo Yee Construction*") at [17]–[18]. There, the Court of Appeal affirmed the words of Lord Bridge of Harwich in *Ainsbury v Millington* [1987] 1 All ER 929 that:

> … It has always been a fundamental feature of our judicial system that the courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.

80 The appeal in *Joo Yee Construction* had arisen out of an originating summons taken out by the respondent's liquidators against four subcontractors and the AG, who was representing the Ministry of Health. The High Court's decision, which held in favour of the respondent's liquidators, was challenged on appeal by the AG alone, as the four subcontractors had withdrawn their appeals. The respondent argued, as a preliminary point, that the court should decline to hear the appeal on the ground that there was no live issue to be decided between the parties. The Court of Appeal agreed with the respondent in this regard, holding that the court should not be asked to decide a question of law which was of no interest to the Ministry of Health, but was of interest "only to the four nominated subcontractors who were not parties to this appeal and who were not before this court" (see *Joo Yee Construction* at [18]).

81 The need for an appellant to possess "a real interest in the outcome" before a court would hear a matter was also affirmed in *Foo Jong Peng and others v Phua Kiah Mai and another* [2012] 4 SLR 1267 at [25].

82 I agreed with the AG that the seven questions raised by the applicant concerned only conceptual questions of law. These questions did not relate to issues concerning the merits of his discovery application in SUM 3167/2019; they were merely ancillary to the key issue of whether the documents sought were necessary or relevant. A finding by the Court of Appeal on, for instance, whether discovery applications ought to be allowed at the leave stage, would not affect my decision in SUM 3167/2019 that the documents and interrogatories being sought by the applicant were irrelevant and unnecessary. Moreover, the applicant had not specified from the outset in his application for leave to appeal that he was intending to challenge my decision on the substantive

merits, as I next address.

Whether the applicant needed to obtain leave to appeal on the merits

83 The applicant's response to the AG's argument on the requirement that there be a live issue before leave to appeal ought to be granted was that "an appeal lies against the order that is the outcome and not the reasons for the order". [note: 26]

84 The applicant relied on *Tang Liang Hong* in this regard, arguing that applying the reasoning at [23]–[25] of that decision, if I were to grant leave to appeal "against the entire order", he would be entitled to challenge "whatever reasons" I had for my decision in SUM 3167/2019, including my findings on the merits of his discovery application. [note: 27] If this were not the position at law, the applicant contended, then there would never be an instance where leave to appeal may be granted when there was a decision on the merits. [note: 28] Reliance was also placed on the Hong Kong Court of Appeal decision of *King Royal Ltd v Lam Kwan Yuk* [2005] 3 HKLRD 488 ("*Lam Kwan Yuk*"), which was, unfortunately only adduced by the applicant on the day of the hearing itself.

85 With respect, I found the applicant's position to be contrived and unconvincing, as it stemmed from an incorrect reading of the decision in *Tang Liang Hong*.

86 The case concerned an application for leave to appeal to the Court of Appeal against an order of costs. The High Court had ordered the defendant, Tang Liang Hong, to pay the costs of the application by the plaintiff, Lee Kuan Yew, to delete certain paragraphs from the plaintiff's first and third affidavits. At first instance, Lai Kew Chai J had found an abuse of process on the part of the defendant, and on this basis allowed the plaintiff's application to delete the said paragraphs and awarded costs to the plaintiff. Notably, the defendant had not opposed the plaintiff's application to delete the paragraphs during the course of the High Court proceedings.

87 On appeal, counsel for the plaintiff argued that as there was no appeal on the High Court's substantive order to delete the paragraphs, the Court of Appeal had to assume that there was an abuse of process by the defendant (see *Tang Liang Hong* at [23]). The court disagreed that an abuse of court process had to be assumed simply because the substantive order was made on the grounds of an abuse of process against which there was no appeal. It was in this context that the Court of Appeal stated at [24] that an appeal "lies against the order (that is, the outcome) made by the judge, and not the reasons he gives for his decision". As the defendant could not appeal against Lai J's reasons (the presence of an abuse of process) when the outcome (the deletion of the paragraphs) was not contested, this meant that "the reasons given by the judge need not necessarily be accepted and therefore [were] binding and no longer open to challenge" (see *Tang Liang Hong* at [25]). Thus, the Court of Appeal was conscious that the reasons put forward by Lai J might "later" have an impact on the costs order, and therefore took the view that it was "still open to argue against these reasons to oppose the order of costs" (see *Tang Liang Hong* at [25]). It was clear that the applicant had misunderstood the Court of Appeal's guidance in *Tang Liang Hong*.

88 I also disagreed with the applicant's contention that there would *never* be an instance where leave to appeal may be granted when there was a decision on the merits. This was clearly an overstatement. Leave to appeal may be granted in relation to a decision on the merits where, for instance, the trial judge had made a *prima facie* error in arriving at his decision.

89 I was also of the view that the decision of *Lam Kwan Yuk* did not assist the applicant. In the course of its decision, the Court of Appeal considered the decision of the English Court of Appeal in

Jones v Biernstein [1900] 1 QB 100. The court stated, at [10] that:

> … It does seem that *the court would not allow the appellant to argue a point because he had obtained leave to appeal from the Divisional Court on one point only and that point formed the only point in the Divisional Court's decision*. The Court of Appeal confined the appellant to that point. *The point which was sought to be raised appears to have been a question of fact* and, in those circumstances, it may well be that a different attitude would have been taken because, of course, appeals on questions of fact from the Divisional Court which had heard an appeal from the County Court were governed by different rules from appeals on questions of law. [emphasis added]

90 It appeared to me that the court was making it clear that it would not be permissible for questions of fact to be raised on appeal when leave to appeal on that specific ground had not been granted.

91 In the present case, counsel for the applicant had said nothing about the merits or why my reasons (which in any event had not been fully articulated yet at the time of the hearing) for dismissing SUM 3167/2019 were *prima facie* or plainly wrong. As I had stated in my brief oral remarks in dismissing SUM 3167/2019 on 19 July 2019, I found that the documents sought were neither relevant nor necessary. I have explained at [56]–[69] above my reasons for arriving at that conclusion. The applicant elected not to raise any questions in SUM 3764/2019 relating to the merits of his discovery application. Even in his written submissions, other than a bare proclamation that he intended to challenge my decision "in full, i.e. in respect of the ruling on the law and finding on the merits", [note: 29] there were no submissions whatsoever to be found in relation to the merits. Instead, he chose to anchor the application for leave to appeal squarely on the seven questions listed in SUM 3764/2019, in the hope that as long as any one of these were found to be tenable he would then launch a subsequent full-scale offensive or, as counsel pithily described it in his oral submissions, a "blanket" challenge to my decision, [note: 30] including on the merits.

92 With respect, I saw no basis to endorse this rather disingenuous approach. Neither *Tang Liang Hong* nor *Lam Kwan Yuk* provide support for it, and I did not think this should be a permissible mode for an applicant to obtain leave to appeal. In the course of the hearing, counsel did eventually attempt to make oral submissions on the merits. [note: 31] I did not think it was appropriate to allow him to put in, whether as an afterthought or otherwise, oral arguments on the merits during the hearing. I found this inherently objectionable as it would effectively sanction a "drip feed" strategy and allow an applicant to mount fresh arguments pertaining to the substantive merits only upon being prompted to do so. This was little more than a calculated ambush, bordering in my view on an abuse of process. It was a deliberate and conscious decision on the applicant's part to craft SUM 3764/2019 as he did, without any reference to my ruling on the merits in SUM 3167/2019. Having chosen this path, he must stand or fall by that decision.

93 I concluded that leave to appeal should not be granted. The applicant's approach betrayed his lack of a real interest in the outcome of the appeal. Hence there was no need for me to consider whether the applicant's seven questions satisfied the criteria in *Tang Liang Hong*, although I noted that the AG was prepared to concede, should the court be minded to grant leave, that Question 1 may perhaps be considered as involving either a question of general principle decided for the first time, or a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. [note: 32]

94 For the sake of completeness, I add that I saw no reason to allow leave to appeal against my

decision on the merits of SUM 3167/2019. I considered that none of the three grounds in *Tang Liang Hong* as outlined at [75] above had been satisfied, and denying the applicant leave would not result in any miscarriage of justice.

Conclusion

95 For the above reasons, I was of the view that the application for specific discovery and leave to serve interrogatories should be dismissed, and that leave to appeal should not be granted. I shall hear parties on the main proceedings, OS 807/2019, in due course.

[note: 1] Pannir Selvam a/l Pranthaman's 1st Affidavit dated 24 June 2019, Tab 5 at pp 86 to 124.

[note: 2] Pannir Selvam a/l Pranthaman's 1st Affidavit dated 24 June 2019, Tab 6 at pp 126 to 128.

[note: 3] Pannir Selvam a/l Pranthaman's 1st Affidavit dated 24 June 2019, Tab 7 at pp 136 to 137.

[note: 4] Pannir Selvam a/l Pranthaman's 1st Affidavit dated 24 June 2019, Tab 8 at pp 142 to 149.

[note: 5] Pannir Selvam a/l Pranthaman's 1st Affidavit dated 24 June 2019, Tab 9 at pp 158 to 159.

[note: 6] Notes of Evidence ("NE") (19 August 2019) at p 1.

[note: 7] NE (19 August 2019) at p 2.

[note: 8] Applicant's written submissions (for OS 807/2019) at para 39.

[note: 9] Applicant's written submissions (for OS 807/2019) at paras 89 to 95.

[note: 10] Applicant's written submissions (for OS 807/2019) at paras 39.3 and 82.

[note: 11] Pannir Selvam a/l Pranthaman's 2nd Affidavit dated 24 June 2019 at para 9.

[note: 12] Pannir Selvam a/l Pranthaman's 2nd Affidavit dated 24 June 2019 at paras 54 and 59.

[note: 13] Khairul Faiz bin Nasaruddin's 1st affidavit dated 1 July 2019 at p 12.

[note: 14] Lee Kah Chong Benny's 1st affidavit dated 1 July 2019 at para 8; Toh Gek Choo's 1st affidavit dated 1 July 2019 at paras 9 to 10.

[note: 15] NE (19 July 2019) at p 14.

[note: 16] NE (19 July 2019) at p 14.

[note: 17] NE (19 July 2019) at p 28.

[note: 18] NE (19 July 2019) at p 39.

[note: 19] NE (19 July 2019) at p 37.

[note: 20] NE (19 July 2019) at p 57.

[note: 21] NE (19 July 2019) at p 70.

[note: 22] Summons for Leave to Appeal (26 July 2019) in SUM 3764/2019.

[note: 23] AG's written submissions (for SUM 3764/2019) at para 2.

[note: 24] NE (19 August 2019) at p 5.

[note: 25] Applicant's written submissions (for SUM 3764/2019) at para 2.

[note: 26] NE (19 August 2019) at p 3.

[note: 27] NE (19 August 2019) at pp 3–6.

[note: 28] NE (19 August 2019) at p 6.

[note: 29] Applicant's written submissions (for SUM 3764/2019) at para 4.

[note: 30] NE (19 August 2019) at p 19.

[note: 31] NE (19 August 2019) at p 11.

[note: 32] AG's written submissions (for SUM 3764/2019) at para 20.