

Public Prosecutor v Mohamad Isham bin Ibrahim and another

[2021] SGHC 186

**Case Number** : Criminal Case No 46 of 2018  
**Decision Date** : 02 August 2021  
**Tribunal/Court** : General Division of the High Court  
**Coram** : Dedar Singh Gill J  
**Counsel Name(s)** : Mark Jayaratnam, Theong Li Han and Teo Siu Ming (Attorney-General's Chambers) for the Prosecution; Satwant Singh s/o Sarban Singh (Satwant & Associates) and Wong Li-Yen Dew (Dew Chambers) for the first accused.  
**Parties** : Public Prosecutor — Mohamad Isham Bin Ibrahim — Thamotharan Nayar A/L Gopalan

*Criminal Law – Statutory offences – Misuse of Drugs Act*

2 August 2021

Judgment reserved.

**Dedar Singh Gill J:**

**Introduction**

1 The first accused, Mohamad Isham bin Ibrahim ("**Isham**"), is a 45-year-old male Singaporean. The second accused, Thamotharan Nayar A/L Gopalan ("**Thamotharan**") is a Malaysian national. He was initially charged with an offence of trafficking in a controlled drug under s 5(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("**MDA**"), but prior to the start of trial, he was granted a discharge not amounting to an acquittal on 20 April 2020. He left Singapore thereafter. The present judgment therefore does not concern any alleged criminal offences committed by Thamotharan, although his role in the relevant events will be discussed where appropriate.

2 On 26 October 2016, Isham was arrested by officers of the Central Narcotics Bureau ("**CNB**") after parking a black Fiat car ("**Black Fiat car**") in the carpark of Cairnhill Place ("**Cairnhill Carpark**"). A blue bag with the "M1" brand on it (marked "**A1**") was seized from the boot of the Black Fiat car and allegedly found to contain, amongst other things, not less than 1,805.4g of granular/powdery substance, which contained not less than 52.88g of diamorphine. Isham was charged with having in his possession for the purpose of trafficking without authorisation not less than 52.88g of diamorphine, an offence under s 5(1)(a) read with s 5(2) of the MDA (the "**Charge**"). He claimed trial to the Charge.

3 Before discussing the background facts and parties' cases, I set out the applicable statutory provisions for ease of reference. Sections 5(1)(a) and 5(2) of the MDA provide:

5.—(1) Except as authorised by this Act, **it shall be an offence for a person**, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

( a ) **to traffic in a controlled drug;**

( b ) to offer to traffic in a controlled drug; or

( c ) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his **possession that drug for the purpose of trafficking**.

[emphasis in bold added]

4 The term “traffic” is defined under s 2 of the MDA as follows:

“**traffic**” means —

( a ) to **sell, give, administer, transport, send, deliver** or **distribute**; or

( b ) to **offer to do anything mentioned** in paragraph (a),

otherwise than under the authority of this Act, and “trafficking” has a corresponding meaning

[emphasis in bold added]

5 In *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59], the court summarised the three elements of an offence under s 5(1)(a) read with s 5(2) of the MDA as follows:

(a) possession of a controlled drug;

(b) knowledge of the nature of the controlled drug; and

(c) the possession of the drug for the purpose of trafficking (which was not authorised).

## **Background**

### ***Arrest of Isham***

6 The key facts leading to Isham’s arrest are mostly undisputed. On 26 October 2016, at around 5.55pm, Isham boarded the Black Fiat car at a carpark near Block 23 Toa Payoh East, Singapore, where Isham resided. He was the driver and his girlfriend (“**Aslinda**”) was in the front passenger seat.

7 Isham drove to Scotts Road and parked the Black Fiat car at Deck 3A of the carpark of Far East Plaza (“**FEP Carpark**”). He then left with his girlfriend to go to Orchard Road. CNB officers arrived at the FEP Carpark a while later and placed the Black Fiat car under observation.

8 At about 7.10pm, Aslinda returned to the Black Fiat car without Isham. Around the same time, Isham went to the motorcycle bay located at Deck 1A of the FEP Carpark (“**FEP Motorcycle Bay**”). At 7.12pm, Isham returned to the Black Fiat car and opened the car boot. Isham subsequently drove the Black Fiat car out of the FEP Carpark with Aslinda in the front passenger seat.

9 Isham drove to Cairnhill Carpark and parked the Black Fiat car at Deck P2. At about 7.30pm, a party of CNB officers arrested Isham just outside the car and Aslinda in the front passenger seat.

### ***Exhibits seized from the Black Fiat car***

10 A search was performed on the Black Fiat car and the blue bag A1 was recovered from the car boot. The blue bag A1 contained a white plastic bag (marked “**A1A**”), in which there was another white plastic bag (marked “**A1A1**”) which in turn contained a red plastic bag (marked “**A1A1A**”)

containing an orange plastic bag (marked "**A1A1A1**"). The following were found inside the orange plastic bag:

- (a) One packet of granular/powdery substance (marked "**A1A1A1A**").
- (b) Three bundles (marked "**A1A1A1B**", "**A1A1A1C**" and "**A1A1A1D**"), each of which contained a layer of plastic wrapping followed by a layer of newspaper wrapping, another layer of plastic wrapping and finally a plastic packet. Each of the three plastic packets contained a granular/powdery substance and they were marked "**A1A1A1B1A1**", "**A1A1A1C1A1**" and "**A1A1A1D1A1**" respectively.

The exhibits marked "A1A1A1A", "A1A1A1B1A1", "A1A1A1C1A1" and "A1A1A1D1A1" are collectively referred to as the "**Drug Bundles**".

**HSA analysis and the Charge**

11 On 20 January 2017, Joey Ng, an analyst from the Health Sciences Authority ("**HSA**"), issued four certificates stating the results of the analysis of four exhibits marked "A1A1A1A", "A1A1A1B1A1", "A1A1A1C1A1" and "A1A1A1D1A1". The results are summarised as follows:

<b>Exhibit Marking</b>	<b>Description stated in the HSA certificate</b>	<b>Gross weight</b>	<b>Analysed weight of diamorphine</b>
<b>A1A1A1A</b>	One packet containing granular/powdery substance	Not less than 450.9g	Not less than 13.45g
<b>A1A1A1B1A1</b>	One packet containing granular/powdery substance	Not less than 450.9g	Not less than 13.17g
<b>A1A1A1C1A1</b>	One packet containing granular/powdery substance	Not less than 452.1g	Not less than 13.35g
<b>A1A1A1D1A1</b>	One packet containing granular/powdery substance	Not less than 451.5g	Not less than 12.91g
<b>TOTAL:</b>		Not less than 1805.4g	Not less than 52.88g

12 Relying on the above results, the Prosecution submits that the four Drug Bundles seized from the Black Fiat car collectively contained not less than 1,805.4g of granular/powdery substance, which was analysed and found to contain not less than 52.88g of diamorphine. This formed the subject matter of the Charge against Isham, which states as follows:

That you, **MOHAMAD ISHAM BIN IBRAHIM**, on 26 October 2016, at or about 7.30 pm, in a Black Fiat bearing registration number SGZ 9780C, which you had parked at Deck P2 of Cairnhill Place, located at 22 Bideford Road, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"), *to wit*, by having in your possession for the purpose of trafficking four packets of granular/powdery substance which were analysed and found to contain not less than 52.88 grams of diamorphine, without

authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the MDA read with section 5(2) of the MDA, which is punishable under s 33(1) of the MDA.

### ***Isham's police statements***

13 The following 12 statements were recorded from Isham in the course of investigations (collectively, the "**Statements**"):

- (a) the first contemporaneous statement recorded on 26 October 2016 from 8.20pm to 9.40pm under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("**CPC**") ("**1st contemporaneous statement**");
- (b) the second contemporaneous statement recorded on 26 October 2016 from 10.55pm to 11.10pm under s 22 of the CPC ("**2nd contemporaneous statement**");
- (c) the cautioned statement recorded on 27 October 2016 at 2.55pm under s 23 of the CPC ("**Cautioned Statement**");
- (d) the first long statement recorded on 29 October 2016 at 12.45pm under s 22 of the CPC ("**1st long statement**");
- (e) the second long statement recorded on 30 October 2016 at 9.17pm under s 22 of the CPC ("**2nd long statement**");
- (f) the third long statement recorded on 31 October 2016 at 5.51pm under s 22 of the CPC ("**3rd long statement**");
- (g) the fourth long statement recorded on 1 November 2016 at 10.50am under s 22 of the CPC ("**4th long statement**");
- (h) the fifth long statement recorded on 2 November 2016 at 10.37am under s 22 of the CPC ("**5th long statement**");
- (i) the sixth long statement recorded on 20 February 2017 at 11.10am under s 22 of the CPC ("**6th long statement**");
- (j) the seventh long statement recorded on 9 June 2017 at 9.21am under s 22 of the CPC ("**7th long statement**");
- (k) the eighth long statement recorded on 30 January 2020 at 10.30am under s 22 of the CPC ("**8th long statement**"); and
- (l) the ninth long statement recorded on 2 March 2020 at 1.55pm under s 22 of the CPC ("**9th long statement**").

14 The admissibility of the Statements was not challenged at trial. I briefly summarise their contents.

15 In the 1st contemporaneous statement, Isham identified the Drug Bundles in the boot of the Black Fiat car as "peh hoon" (which he understood to mean "heroin", the more commonly known term for diamorphine). Isham confirmed that the Drug Bundles belonged to him and stated that they were

for sale.

16 In the 2nd contemporaneous statement, Isham was shown various exhibits seized from his flat at Block 23 Toa Payoh East, Singapore ("**the Flat**"). He identified a packet of brown granular substance as "peh hoon" and stated that it was for his own consumption.

17 In the Cautioned Statement, Isham was served with a charge for trafficking in the four Drug Bundles which were believed to contain more than 15g of diamorphine. Isham stated "I admit all the things belong to me. My girlfriend has nothing to do with this. She does not know what I did. So I accept whatever punishment. I would like to ask for leniency".

18 In the 1st long statement, Isham said that he started working for a person known as "Boy" sometime in October 2016. Boy would instruct his runner to drop drugs at certain specified locations and Isham would pick up the drugs. Isham would then deliver the drugs according to Boy's instructions, and Isham would be paid for each delivery. Prior to his arrest on 26 October 2016, Isham had collected and delivered drugs for Boy on two occasions.

19 In the 2nd long statement, Isham provided details of the two earlier occasions where he collected and delivered drugs for Boy. The first transaction was on 17 October 2016 whilst the second transaction was on 20 October 2016.

20 In the 3rd long statement, Isham elaborated further on the second transaction on 20 October 2016. In that transaction, he had collected three "stones" of heroin which had been left in a paper bag at his doorstep. He delivered two "stones" to a customer on Boy's instructions without incident. However, on his way to delivering the last "stone" of heroin, Isham saw CNB officers around the drop-off location. He then left the area and disposed of the last "stone" of heroin. He called Boy to inform him of what happened and asked if he was being set up. Boy denied this, whereupon Isham said that he would compensate Boy \$3,500 for the "stone" of heroin he had thrown away.

21 In his 3rd long statement, Isham also gave details of the delivery he was supposed to make on the day of his arrest on 26 October 2016. According to Isham, he spoke with Boy over the phone in the afternoon of 26 October 2016 and agreed to deliver four "stones" of heroin for Boy on that particular occasion. Isham was out with Aslinda at Far East Plaza at the time. It was thus agreed that Boy would arrange for the drugs to be left underneath Isham's Black Fiat car, which was parked at the FEP Carpark. Isham would then pick the drugs up from there.

22 At about 6.15pm, Boy informed Isham over the phone that the four "stones" of heroin had been dropped off under Isham's Black Fiat car. Boy also asked that Isham pay the \$3,500 which the latter owed and Isham agreed. At 6.40pm, Boy called Isham to inform him that the "money collector" would reach the FEP Motorcycle Bay at around 6.45pm. Isham told Aslinda to return to the Black Fiat car first, whilst he headed to the FEP Motorcycle Bay. At the FEP Motorcycle Bay, Isham met a male Indian and passed him a red packet containing the money. The male Indian was later identified to be Thamotharan (see [1] above).

23 Isham then returned to the Black Fiat car, where he saw a white plastic bag and a yellow plastic bag underneath the car. He checked that the four Drug Bundles were in the white plastic bag, and found another similar bundle in the yellow plastic bag. He partially unwrapped the Drug Bundles to confirm that they contained heroin, and then placed them in the blue bag A1. Isham then called Boy to demand an explanation as to why there were more drugs than they had agreed upon. Boy explained that he simply needed Isham's help to pass the yellow plastic bag to another of Boy's workers, who would arrive shortly in a car. Whilst on the line with Boy, Isham placed the blue bag A1

containing the Drug Bundles in the boot of the Black Fiat car. A blue Honda then drove by Isham and Isham passed the yellow plastic bag to the person sitting in the front passenger seat. Isham ended the call with Boy and drove off with Aslinda in the Black Fiat car to Cairnhill Carpark, where they were arrested.

24 In the 4th long statement, Isham expounded on the second delivery he carried out for Boy. As for the drugs he collected on the day of his arrest, he explained that he touched the bundle in the yellow plastic bag left underneath the Black Fiat car.

25 In the 5th long statement, Isham explained that he got to know Boy around 2000 when he was working in Malaysia as a bartender. With respect to the transaction on 26 October 2016, Isham clarified that the white and yellow plastic bags he picked up from underneath the Black Fiat car were placed behind the parking lot kerb and that they could only be seen if he walked to the back of the car. He further stated that the four Drug Bundles were not meant for him to sell, but only to deliver.

26 In the 6th long statement, Isham clarified certain details about what happened on 26 October 2016 and stated that Aslinda did not know anything about his drug activities.

27 In the 7th long statement, Isham was shown screen-captures from CCTV footage of the FEP Carpark on 26 October 2016. He was asked what was in a white plastic bag he was seen carrying after meeting the male Indian (*ie*, Thamotharan) at the FEP Motorcycle Bay. Isham insisted that Thamotharan did not pass him anything at the FEP Motorcycle Bay and that he had simply picked up the white plastic bag containing clothes on the way back to the Black Fiat car because he needed to give Aslinda an excuse for taking so long to return. Isham further confirmed that he had picked up the Drug Bundles from underneath his car.

28 In the 8th long statement, Isham implicated Thamotharan for the first time. He stated that it was in fact Thamotharan who had passed him the Drug Bundles at their brief meeting at the FEP Motorcycle Bay on 26 October 2016. Isham explained that he was only incriminating Thamotharan at that juncture because he was previously afraid of what Boy could do to him if he betrayed Boy. However, since Boy did not want to protect him (by allegedly paying for Thamotharan's legal fees but not his), Isham felt that he no longer had any reason to protect Boy.

29 In the 9th long statement, Isham said that he would like an offer to reduce his charge to one of trafficking in 14.99g of diamorphine or for a certificate of substantive assistance to be issued to him as a "courier".

30 It is also relevant to note that a few hours after Isham's arrest on 26 October 2016, Thamotharan was arrested at Tuas checkpoint around 10.30pm. Three persons were also arrested in a blue Honda car (see [23] above) with various exhibits seized from the vehicle.

### **Parties' cases**

31 The Prosecution's case relies on the testimonies of the various CNB officers involved and on Isham's admissions to the elements of the Charge in his Statements and at trial. The Prosecution submits that every element has been proven beyond a reasonable doubt – namely, that Isham was in possession of the Drug Bundles, that he knew of the nature of the drugs contained therein and that he had them in his possession for the purpose of trafficking.

32 According to the Prosecution, it has also discharged its burden of proving beyond a reasonable doubt that the drugs seized from the Black Fiat car were those analysed by the HSA to contain not

less than 52.88g of diamorphine. It submits that it has established an unbroken chain of custody of the Drug Bundles from the time that they were seized to the time that they were analysed by the HSA.

33 As for Isham, he admits that he was in possession of the Drug Bundles, that he knew they contained diamorphine and that he was in possession of the Drug Bundles for the purpose of delivering them to customers (*ie*, "trafficking" as defined in s 2 of the MDA). His sole defence is that there is a reasonable doubt as to the integrity of the chain of custody of the Drug Bundles seized from the Black Fiat car and therefore as to the identity of the drugs analysed by the HSA. Alternatively, if the court finds that there is no such doubt, Isham contends that he was nothing more than a courier.

## **Issues**

34 In light of the parties' cases, the issues that arise for my consideration are as follows:

(a) Whether there is a reasonable doubt that the drug exhibits analysed by the HSA to contain not less than 52.88g of diamorphine were the same Drug Bundles seized from the Black Fiat car.

(b) If the answer to the preceding issue is "no", whether the elements of the Charge are made out.

35 If the elements of the Charge are made out, Isham is to be convicted and the next issue that would arise is sentencing. 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 of the MDA is death. This is subject to s 33B of the MDA, which provides an alternative sentencing regime if the conditions therein are fulfilled.

36 As mentioned earlier, Isham submits that in the event he is convicted of the Charge, he qualifies for the alternative sentencing regime in s 33B of the MDA because he was nothing more than a courier. On the other hand, the Prosecution takes the position that whether or not Isham was a courier is not to be decided at the present stage of the proceedings, which only concerns conviction. The aforementioned issue should thus only be decided at the subsequent sentencing stage. I am inclined to adopt the approach suggested by the Prosecution given that the issues of conviction and sentencing are distinct. I will therefore confine the present judgment to whether or not Isham ought to be convicted of the Charge.

## **Whether there is a reasonable doubt as to the integrity of the chain of custody of the Drug Bundles**

### ***The chain of custody according to the Prosecution***

37 As held by the Court of Appeal in *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("**Affandi**") (at [39]–[41]), it is the Prosecution which bears the burden of establishing an unbroken chain of custody and accounting for the movement of the drug exhibits *at every point* from seizure to analysis. Once this is done, it is for the Defence to suggest a break in the chain of custody at one or more stages. This is not to say, however, that speculative arguments about the possibility of contamination will be entertained.

38 For ease of reference, I set out a list of the key CNB officers involved in Isham's arrest ("**arresting CNB officers**"), as follows:

- (a) Inspector David Ng ("**Insp David**");
- (b) Sergeant Dadly bin Osman ("**Sgt Dadly**");
- (c) Senior Staff Sergeant Tay Keng Chye ("**SSSgt Sunny Tay**");
- (d) Staff Sergeant Muhammad Helmi bin Abdul Jalal ("**SSgt Helmi**");
- (e) Sergeant Yogaraj s/o Rangunathan Pillay ("**Sgt Yogaraj**"); and
- (f) Woman Staff Sergeant Nurshila binte Abdullah ("**SSgt Nurshila**").

39 The following CNB officers were also involved in handling the exhibits seized during the operation:

- (a) Assistant Superintendent Peh Zhen Hao ("**ASP Peh**"); and
- (b) Inspector Bong Xiu Feng ("**IO Bong**").

40 According to the Prosecution, there was no break in the chain of custody of the Drug Bundles. The Drug Bundles seized from the Black Fiat car at the time of Isham's arrest were the same as those analysed by HSA to contain not less than 52.88g of diamorphine. The chain of custody, as set out in detail by the Prosecution, is as follows.

(a) Shortly after Isham was arrested on 26 October 2016, Insp David and Sgt Dadly commenced a physical search of the Black Fiat car at about 7.35pm. This was done in Isham's presence. During the search, Sgt Yogaraj escorted Isham and ensured that he was observing the search, such that each item that was recovered was shown to Isham before it was seized and recorded. The exhibits ("**Car Exhibits**") seized from the Black Fiat car included the Drug Bundles in the blue bag A1. Each exhibit was first placed by Sgt Dadly on a piece of brown paper laid on the ground, and then sealed by SSSgt Sunny Tay in a tamper-proof bag.

(b) Each tamper-proof bag was labelled according to the convention practised by the CNB Special Task Force. Sgt Dadly informed SSgt Helmi of the labels of each exhibit, and the latter recorded them in the field diary ("**Field Diary**"). Thereafter, SSSgt Sunny Tay placed the Car Exhibits together in a duffel bag ("**Duffel Bag**").

(c) The search of the Black Fiat car was completed at about 8.05pm. At about 8.07pm, SSSgt Sunny Tay handed the Duffel Bag containing the Car Exhibits to Sgt Dadly so that the latter could record the 1st contemporaneous statement from Isham.

(d) After recording the 1st contemporaneous statement, Sgt Dadly passed the Duffel Bag containing the Car Exhibits to Sgt Yogaraj at about 9.40pm. Upon receiving the Duffel Bag, Sgt Yogaraj checked against the Field Diary to ensure that the Drug Bundles were in the Duffel Bag. He confirmed that the exhibits had been labelled and that the labels had been recorded in the Field Diary.

(e) The arresting CNB officers then escorted Isham and Aslinda to Isham's Flat at Block 23 Toa Payoh East. On the way to the Flat, the Duffel Bag containing the Car Exhibits remained in the custody of Sgt Yogaraj.



(f) Once at the Flat, the arresting CNB officers began searching the place. Sgt Yogaraj participated in the search, during which the Duffel Bag containing the Car Exhibits remained in his custody. Sgt Yogaraj recovered various exhibits from the Flat ("**Flat Exhibits**"), which he sealed in tamper-proof bags. The Flat Exhibits were then placed in the same Duffel Bag as the Car Exhibits. The search of the Flat ended at about 10.50pm.

(g) At about 10.54pm, Sgt Yogaraj handed the Duffel Bag containing the Car Exhibits and the Flat Exhibits ("**Seized Exhibits**") to Sgt Dadly so that the latter could record the 2nd contemporaneous statement from Isham in the Flat.

(h) After the recording of the 2nd contemporaneous statement was completed between 10.55pm and 11.10pm, Sgt Dadly returned the Duffel Bag containing the Seized Exhibits to Sgt Yogaraj.

(i) From 26 October 2016 at about 11.10pm to 27 October 2016 at about 4.40am, Sgt Yogaraj had custody of the Duffel Bag containing the Car Exhibits and the Flat Exhibits. He confirmed at trial that he did not leave the Duffel Bag anywhere or pass it to anyone else.

(j) On 27 October 2016, at about 4.40am, the processing of the Seized Exhibits commenced in the Exhibit Management Room ("**EMR**") of the CNB Headquarters ("**CNB HQ**"). In the EMR, Sgt Yogaraj opened the Duffel Bag containing the Car Exhibits, the Flat Exhibits and Isham's personal properties and handed them to ASP Peh. The handover was witnessed by IO Bong. ASP Peh ensured that all the exhibits were in order by verifying them against the Field Diary and the draft police report. ASP Peh then handed the said exhibits over to IO Bong.

(k) IO Bong laid out all the exhibits and marked them according to her own system (which was used for the purpose of prosecution and which was different from that used by the arresting CNB officers at the scene of Isham's arrest). She also had the exhibits photographed and weighed the Drug Bundles. Once she was done, IO Bong kept all the exhibits in a locked cupboard in her locked office, both of which could only be accessed by her. IO Bong confirmed at trial that there was no possibility of a mix-up. Subsequently, she took out the exhibits to prepare the charge against Isham and to adhere the exhibit labels onto the tamper-proof bags and duly returned the exhibits to the same locked cupboard thereafter.

(l) On 28 October 2016, between 2.50pm and 2.51pm, IO Bong submitted the Drug Bundles to the HSA for analysis.

(m) During the approximately one-month period that the Drug Bundles were kept at the HSA, they were stored in a secured room which only authorised officers had access to. In the secured room, the Drug Bundles were kept in a locked cupboard which only the HSA analyst, Joey Ng, had access to. Joey Ng subsequently analysed the Drug Bundles, and issued certificates stating the results of her analysis (see the summary at [11] above).

41 The crucial question to be answered is whether there is any reasonable doubt that the drugs analysed by the HSA were the Drug Bundles that were seized from the Black Fiat car.

42 For the reasons set out in the analysis below, I am of the view that the answer is "no". The chain of custody as set out by the Prosecution at [40] above is supported by and consistent with (a) the testimonies of the various CNB officers involved in the operation, which was credible and in line with their conditioned statements; and (b) other evidence such as Isham's admission in his 3rd long statement (see [81]–[82] below). Isham has, however, made numerous arguments impugning the

integrity of the chain of custody. I will discuss these arguments in the course of reviewing the Prosecution's evidence in support of the chain of custody. In particular, I will structure my analysis by addressing the following areas in turn:

- (a) Specific evidential issues as to the reliability of the Field Diary and the conditioned statements of the arresting CNB officers, which the Prosecution relies on.
- (b) Specific allegations made by Isham in respect of each stage of the chain of custody set out by the Prosecution.
- (c) The alleged discrepancies in the gross weights of the drugs measured by the CNB's IO Bong and those measured by the HSA analyst Joey Ng.
- (d) Remaining evidential issues.

***Specific evidential issues as to the Field Diary and conditioned statements of the arresting CNB officers***

43 I begin with the specific evidential issues which Isham has raised in respect of the Prosecution's reliance on (a) the Field Diary used during the operation; and (b) the conditioned statements of the arresting CNB officers.

*Field Diary*

44 At trial, the Deputy Public Prosecutor ("**DPP**") informed me that the original Field Diary used in the operation to arrest Isham could not be located and therefore only a copy of the same could be adduced in evidence. The Prosecution's position is that the entries reflected in the copy of the Field Diary adduced ("**Field Diary copy**") support the chain of custody at [40] above. Isham contends, however, that the contents of the Field Diary copy are unreliable because there are "entries which are unverifiable, missing and...contains errors". He alleges, *inter alia*, as follows:

- (a) SSgt Helmi admitted on the stand that there was information missing from the Field Diary, including who had custody of the Drugs Bundles at all material times and which CNB officers went to which location. SSgt Helmi also could not identify who gave him the Field Diary or why there were entries already written in the diary before he started recording.
- (b) The original Field Diary could not even be located by the CNB. What was produced in court was merely a copy.
- (c) The Field Diary was therefore not a contemporaneous record of events. Further, some of the information recorded was hearsay and therefore unreliable. SSgt Helmi confirmed that some of the information recorded was based on his own personal knowledge, but other information had been told to him by other officers.

45 My main difficulty in respect of the Prosecution's reliance on the Field Diary copy is one of admissibility, and not merely reliability or weight (as Isham's arguments go toward). Section 66 of the Evidence Act (Cap 97, 1997 Rev Ed) ("**EA**") stipulates that all documents must be proved by "primary evidence", meaning that the *document itself* must be produced for the inspection of the court. This is subject to exceptions set out in s 67 of the EA. In particular, s 67(1)(c) of the EA permits secondary evidence to be given of the "existence, condition or contents of a document admissible in evidence" where "the original has been destroyed or lost, or when the party offering evidence of its contents

cannot for any other reason not arising from his own default or neglect produce it in reasonable time". The Prosecution insists that the Field Diary copy is admissible as secondary evidence pursuant to s 67(1)(c) of the EA because "the original [Field Diary] cannot be located" and SSgt Helmi has "authenticated the entries in the [F]ield [D]iary [copy] which were recorded in his own handwriting". The problem for the Prosecution, however, is that there is no admissible evidence establishing that the original Field Diary genuinely cannot be located such that the exception in s 67(1)(c) of the EA can be invoked.

46 I note that when the Field Diary copy was first produced by the Prosecution during the trial itself, the DPP omitted to inform me of the fact that the version provided was merely a copy of the diary and not the original. This fact was only disclosed to me later, a state of affairs which I found to be highly unsatisfactory as I mentioned to parties at the time. When I asked where the original Field Diary was, the DPP replied that "we are not able to trace the original book" and that "[t]he IO has not been able to locate it". Crucially, however, no witness was called to give evidence to that effect and the "IO" in question was never even identified. Even at present, I have many questions as to how and when the original Field Diary was lost, and when and why the Field Diary copy was made. I am unable to simply accept the DPP's reply that the original Field Diary cannot be located given that it constitutes evidence from the bar, which is inadmissible. Without any witness testimony to support the Prosecution's submission, there is simply no basis for the Prosecution to invoke the exception in s 67(1)(c) of the EA. The Field Diary copy is hence inadmissible in evidence, and I accordingly disregard the witnesses' testimonies in respect of the specific entries reflected in the Field Diary copy.

#### *Conditioned statements of the arresting CNB officers*

47 Next, there is also a general dispute as to the reliability of the conditioned statements (dated May 2018) given by the arresting CNB officers (*ie*, Insp David, SSgt Nurshila, SSSgt Sunny Tay, Sgt Dadly, Sgt Yogaraj and SSgt Helmi).

48 According to the Prosecution, the arresting CNB officers prepared what is described as their own "self-statements" soon after Isham's arrest. A "self-statement" was essentially a witness statement prepared personally by each CNB officer, setting out the CNB officer's version of what happened during the operation and what actions they personally took. The self-statements were supposedly prepared within a few days to a week (or as soon as possible) after the operation while the CNB officer's memory was still fresh. The conditioned statements of the relevant CNB officers were then drafted based on these self-statements. At trial, the arresting CNB officers mostly testified that the draft of their conditioned statements had actually been prepared by another investigation officer ("IO") working off their individual self-statements. The arresting CNB officers generally could not recall the name of the IO who had prepared their draft conditioned statements. In any event, this was said to be immaterial because none of the arresting CNB officers testified that he/she had signed his/her conditioned statement without reading it or agreeing with its contents. The Prosecution thus submits that "full weight" ought to be given to the arresting officers' conditioned statements in May 2018, such statements having been prepared based on their self-statements which were made while their memories of the operation in October 2016 were still fresh.

49 On the other hand, Isham contends that the alleged self-statements simply do not exist. This is on the basis that (a) the self-statements were not adduced at trial; and (b) save for SSgt Helmi, the arresting CNB officers "refused" to state who they had submitted their self-statements to. As to the conditioned statements of the arresting CNB officers themselves, Isham argues that they were "not independently written" but had instead been "tailored to fit the evidence by [the] mysterious IO [involved in preparing them]". In particular, it is noted that the conditioned statements had used "the same words, date and time" when describing various events during the operation to arrest Isham. It is

hence alleged that the CNB officers appeared motivated to present “a united front in their presentation of their testimonies in Court [so as to cover] each other for not complying with protocols” and that the CNB officers were “willing to go to any extent including distorting the truth to ensure that Isham [would] be hanged”. Presumably, Isham therefore wants the conditioned statements in question to either be excluded altogether or given little to no weight.

50 To my mind, Isham’s allegations that the conditioned statements of the arresting CNB officers had been distorted and falsely tailored to fit a particular narrative were extremely serious in nature. Yet, as the Prosecution points out, Isham’s counsel did not specifically put these allegations to the relevant CNB officers at trial.

51 I accept that on their face, many parts of the arresting CNB officers’ conditioned statements used identical or near-identical language and wording. Indeed, where two or more CNB officers were involved in a particular event during the operation (*ie*, the physical search of the Black Fiat car), the wording of the accounts given in their individual conditioned statements was often uncannily similar.

52 In *Ernest Ferdinand Perez De La Sala v Compañía De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894, the Court of Appeal held (at [136]) that in witness preparation, the line that must not be crossed is that *the witness’s evidence must remain his own*. In my view, this standard is fully applicable in the present case. In certain circumstances, similarities in the conditioned statements of witnesses may well give rise to the inference that their evidence has been supplanted or supplemented by someone else. For example, a witness’s testimony at trial may be materially at odds with the version stated in his/her conditioned statement or a witness might wholly fail to explain how he/she came to know certain things mentioned in his/her conditioned statement. Such matters may support the inference that the witness’s evidence in his/her conditioned statement is in fact given by someone else or that certain witnesses have colluded to falsely align their conditioned statements with each other.

53 In the present case, however, I do not find that the line has been crossed merely based on the similarities in language between the conditioned statements of the arresting CNB officers. The fact that the draft of the conditioned statements had initially been prepared by a third party no doubt creates a risk of contamination, even if that third party was working off a previous “self-statement” given by the witness himself. Nevertheless, each arresting CNB officer ultimately signed off on his/her own conditioned statement in his/her own name. This was accompanied by a declaration that the contents of the statement were “true to the best of [the witness’s] knowledge and belief” and a penalty notice that “if [the statement] is tendered in evidence, [the witness] may be liable to prosecution if [he/she has] stated in it anything which [he/she] know[s] to be false or do[es] not believe to be true”. Where they had been asked on the stand, the arresting CNB officers testified that they had confirmed that the contents of their respective conditioned statements were correct before signing them. The testimonies of the arresting CNB officers as to the events of the operation were credible and cogent, and in line with their own conditioned statements. Isham has not pointed me to any significant inconsistencies between the testimonies of the arresting CNB officers and their respective conditioned statements, which might persuade me that their conditioned statements did not in fact reflect their own evidence.

54 That being said, I do not give much credit to the Prosecution’s suggestion that “full[er] weight” should be given to the arresting CNB officers’ conditioned statements *because* they had been drafted based on their self-statements which had been prepared when their memories of the operation were still fresh. The self-statements were not admitted in evidence before me. In the circumstances, there is simply no way of verifying if anything in the conditioned statements actually accords with the contents of the self-statements.

55 To wrap up the point, I am therefore not inclined to simply dismiss out of hand the accounts of the arresting CNB officers set out in their conditioned statements, as Isham urges me to do. They are relevant to my overall assessment of the evidence, at least in setting the context against which their respective testimonies in court were tested. Indeed, my primary focus in assessing the evidence is on the cogency of the oral testimonies of the CNB officers on the stand. It suffices to say that as discussed in my analysis below, the accounts of the CNB officers set out in their conditioned statements were tested on the stand and did withstand scrutiny in court.

### ***Specific allegations at each stage of the chain of custody***

56 Having dealt with the Field Diary and conditioned statements of the arresting CNB officers above, I now review each step of the chain of custody of the Drug Bundles set out by the Prosecution as well as Isham's allegations at each step of the way. In submissions, Isham contends that no CNB officer could conclusively say where the Drug Bundles seized from the Black Fiat car were from the time of seizure to the time they were supposedly handed to ASP Peh at the EMR. As will be seen below, however, Isham in fact disputes the chain of custody from the point of seizure all the way until the Drug Bundles were supposedly submitted by IO Bong to the HSA for analysis. As already stated, I generally find these disputes to be insufficient to raise a reasonable doubt as to the integrity of the chain of custody.

#### *Search of the Black Fiat car at Cairnhill Carpark*

57 In my judgment, the chain of custody of the Drug Bundles at the scene of Isham's arrest in Cairnhill Carpark, as set out at [40(a)]–[40(d)] above, has been satisfactorily proven without the Field Diary copy being admitted in evidence. The chain of custody is amply supported by the cogent and consistent testimonies of Insp David, Sgt Dadly, SSSgt Sunny Tay, Sgt Yogaraj and SSgt Helmi, which were in line with their respective conditioned statements. As mentioned, the entries in the Field Diary copy are inadmissible to show the movement of the Drug Bundles at the scene of Isham's arrest and the specific labels which were given to each exhibit seized. Leaving aside the Field Diary copy, however, I accept the testimonies of the arresting CNB officers that they did in fact (a) pass the Drug Bundles in the manner claimed; (b) label the Car Exhibits according to their own CNB Special Task Force convention and seal them in tamper-proof bags; and (c) record those labels in the Field Diary so that the exhibits could later be identified. For completeness, the testimonies of the arresting CNB officers (mainly Sgt Dadly and SSSgt Sunny Tay) in respect of the latter two matters were given *without* any reference to the contents of the Field Diary. The said matters are particularly significant as they substantially reduce the risk that the Drug Bundles might somehow have been mixed up or tampered with before they were processed in the EMR of the CNB HQ.

58 Isham asserts, however, that contrary to the Prosecution's position, the arresting CNB officers did not mark the Drug Bundles seized from the Black Fiat car at the Cairnhill Carpark immediately. He says that the Drug Bundles were only marked when they were received by ASP Peh and IO Bong in the EMR at the CNB HQ. Curiously, however, Isham cites in support the parts of SSgt Helmi's testimony where SSgt Helmi was cross-examined on certain entries in the Field Diary copy which he recorded and *confirmed* that the arresting CNB officers did label the Drug Bundles at the scene of Isham's arrest, albeit in accordance with their own system of labelling which was different from that eventually used by IO Bong for the purpose of prosecution. I therefore cannot accept Isham's assertion, seeing as SSgt Helmi's testimony is that the Drug Bundles had indeed been labelled at the scene of Isham's arrest.

59 At this juncture, it is also appropriate to discuss the various criticisms that Isham makes in respect of the testimonies of Insp David, SSgt Nurshila and SSSgt Sunny Tay. Isham's criticisms may

be summarised as follows:

(a) Insp David was unable to recall which CNB officer had custody of the Drug Bundles from the time of Isham's arrest to the time that they were supposedly handed to IO Bong in the EMR. Neither was Insp David able to confirm what exhibits were inside the Duffel Bag.

(b) SSgt Nurshila was similarly unable to recall which CNB officer had custody of the Drug Bundles from the time of Isham's arrest to the time that they were supposedly handed to IO Bong in the EMR.

(c) SSSgt Sunny Tay testified that he had passed the Duffel Bag containing the Drug Bundles to Sgt Dadly so that the latter could record Isham's 1st contemporaneous statement. SSSgt Sunny Tay was, however, unable to recall which CNB officers subsequently had custody of the Drug Bundles, although he was certain that it was not him.

60 I agree with the Prosecution that the abovementioned criticisms lack merit. Consistent with the chain of custody set out by the Prosecution, Insp David's evidence was that he was only involved in the physical search of the Black Fiat car. Thereafter, he did not handle the Drug Bundles at all. As for SSgt Nurshila, she was never involved in handling the Drug Bundles during the operation as her duty was only to escort Aslinda. In the circumstances, the inability of these two officers to recall who had custody of the Drug Bundles throughout the operation hardly detracts from the evidence of the other CNB officers who did have such custody at the relevant times (*ie*, Sgt Dadly, SSSgt Sunny Tay, Sgt Yogaraj, ASP Peh and IO Bong) and who had testified that they did.

61 In a similar vein, SSSgt Sunny Tay testified that at the Cairnhill Carpark, he passed the Duffel Bag (containing the Drug Bundles) to Sgt Dadly for the latter to record Isham's 1st contemporaneous statement. Thereafter, SSSgt Sunny Tay's evidence indicated that he did not come into possession of the Duffel Bag again. I do not think much can be made of this given that the other CNB officers (*ie*, Sgt Dadly, Sgt Yogaraj, ASP Peh and IO Bong) all confirmed that after SSSgt Sunny Tay passed the Duffel Bag to Sgt Dadly, they did have custody of the Drug Bundles in the manner set out in the chain of custody at [40(d)]-[40(l)] above.

62 Next, Isham also contends that Sgt Yogaraj's testimony cannot be believed in its entirety for multiple reasons, including the following:

(a) Sgt Yogaraj testified that there was no police briefing with regards to any individual (besides Isham) who was targeted in the operation on 26 October 2016. In fact, there was a briefing where the CNB officers were told that they were monitoring both Isham and Thamotharan.

(b) Sgt Yogaraj testified that while he was surreptitiously observing Thamotharan at the FEP Motorcycle Bay, he did not see Thamotharan giving the Drug Bundles to Isham. This is an "affront to...logic" given that Sgt Yogaraj was extremely near to the two of them at the time.

(c) Sgt Yogaraj testified that he did not witness the Drug Bundles being packed and labelled after they were seized from the Black Fiat car. But this is unbelievable given that Isham had testified that Sgt Yogaraj was standing next to him and had observed the packing of the Seized Exhibits.

(d) Further, Isham testified that while Sgt Dadly was recording his 1st contemporaneous statement in the CNB operational police car, Sgt Yogaraj entered the car, showed him a

photograph of Thamotharan in handcuffs and threatened to punch Isham because Isham said that he did not know Thamotharan.

63 I do not propose to discuss each of the above allegations against Sgt Yogaraj at length. It suffices to say that nothing significant turns on any of them, which I briefly address in turn as follows:

(a) Isham failed to point to any evidence showing that the arresting CNB officers had been briefed about Thamotharan prior to the operation to arrest Isham.

(b) Sgt Yogaraj explained at trial that he did not witness Isham's exchange with Thamotharan at the FEP Motorcycle Bay because Isham had seen him and Sgt Yogaraj therefore looked away to avoid blowing his cover at the scene.

(c) As the Prosecution highlights, Sgt Yogaraj clarified on the stand that when the Drug Bundles were being examined by Sgt Dadly and packed and labelled by SSSgt Sunny Tay at the Cairnhill Carpark, he was focussed on guarding Isham and making sure that Isham was observing the search and seizure. Admittedly, Sgt Yogaraj's testimony that he therefore did not observe the packing and labelling of the Drug Bundles is somewhat strange since he was standing right next to Isham and the search and seizure would still have been within his general field of vision. Nevertheless, it is probably the case that Sgt Yogaraj simply did not pay close attention to what was happening because his focus was on Isham. I can accept Sgt Yogaraj's testimony that he "did not take notice of the search" and took only a "glimpse, because [he] was making...sure that Isham [was] observing the search". Ultimately, this aspect of Sgt Yogaraj's testimony is insufficient to show that he was an unreliable witness.

(d) It is completely unclear what point Isham is trying to make on account of his allegations at [62(d)] above, especially given that he did not challenge the admissibility of the 1st contemporaneous statement. Sgt Yogaraj denied being in the police car during the recording of the said statement and Inspector Vinod s/o Pannerchilvam ("**IO Vinod**") confirmed that prior to Isham's arrest, Thamotharan had never been arrested by the CNB. Thamotharan was only arrested at about 10.30pm on 26 October 2016, about an hour after the recording of the 1st contemporaneous statement concluded at 9.40pm. It was therefore impossible for Sgt Yogaraj to have shown Isham a photograph of Thamotharan in handcuffs during the recording of the statement.

64 I therefore find that the chain of custody as set out at [40(a)]-[40(d)] above has been adequately established.

#### *The journey to and the search of Isham's Flat*

65 Sgt Yogaraj and Sgt Dadly both gave clear and consistent testimony of the movement of the Drug Bundles during the journey to Isham's Flat and the search of the premises, as set out at [40(e)]-[40(h)] above. Their testimony was congruent with the accounts set out in their conditioned statements.

66 At the trial, however, Isham testified that when the CNB officers escorted him from the Cairnhill Carpark to the Flat, he did not see the Duffel Bag containing the Car Exhibits being brought along. He also said that on the way up to the Flat, he saw that none of the CNB officers was carrying the Duffel Bag. In submissions, Isham further claimed that the Duffel Bag had in fact been left unattended in one of the CNB police cars during the search of his Flat. He contended as follows:

(a) Sgt Yogaraj was lying when he said he had brought the Duffel Bag up to the Flat during the search of the same.

(b) According to SSgt Nurshila's testimony, CNB protocol required that the CNB officer who was escorting Isham was to have custody of his personal properties. This meant that during the search of Isham's Flat, Sgt Dadly was the CNB officer who was supposed to hold onto the Duffel Bag (containing the Drug Bundles) because he was Isham's escorting officer at the time. In breach of this protocol, Sgt Dadly did not have custody of the Duffel Bag.

(c) Sgt Dadly stated in his conditioned statement that Sgt Yogaraj had handed over the Seized Exhibits to him at the Flat so that he could record Isham's 2nd contemporaneous statement. After that, Sgt Dadly said that he returned the Seized Exhibits (*ie*, the Car Exhibits and the Flat Exhibits) to Sgt Yogaraj and did not know who had custody of them thereafter. Sgt Dadly was in fact lying in an attempt to bolster Sgt Yogaraj's testimony that Sgt Yogaraj had brought the Duffel Bag up to Isham's Flat.

67 I am unable to accept Isham's arguments above. Sgt Yogaraj testified that he brought the Duffel Bag (containing the Drug Bundles) up to Isham's Flat. This was corroborated by Sgt Dadly, who said that Sgt Yogaraj handed the said Duffel Bag (containing both the Car Exhibits and the Flat Exhibits) to him in the Flat so that Sgt Dadly could record the 2nd contemporaneous statement from Isham. I find no reason to believe that either of them was lying, notwithstanding Isham's claim that the Duffel Bag was not brought to the Flat at any time. Furthermore, Isham's arguments are also based on a mischaracterisation of SSgt Nurshila's testimony. The relevant portions of her testimony (which are referred to in the Defence's closing submissions themselves) state as follows:

Q But who will have custody of the bag?

A I don't know

Q Do you write it ---

A Because my main priority is the female.

Q Correct.

A So you should ask the escorting party that is escorting Isham.

68 As the Prosecution correctly points out, SSgt Nurshila's evidence was simply that her focus during the operation was on escorting Aslinda and that any questions about the custody of the Drug Bundles should be directed towards the CNB officers escorting Isham rather than her. Whilst SSgt Nurshila did testify that "[i]f we escort the accused person, we have to carry the personal properties also", there is nothing to the effect that the CNB officer escorting Isham was required by protocol to also be the one carrying Isham's personal properties (or the Drug Bundles). In any case, even if there was such a protocol, I do not think that this would in itself impugn the integrity of the chain of custody insofar as it would still be clear on the Prosecution's evidence who had the Drug Bundles during the search of Isham's Flat (see [40(e)]-[40(h)] above). The breach of the alleged protocol does not *per se* mean that the Drug Bundles were unaccounted for. Isham's challenge to this step of the chain of custody therefore does not succeed.

*Search of Aslinda's Woodlands flat and the trip to Woodlands checkpoint*



69 Based on the chain of custody set out by the Prosecution at [40(i)] above, after Isham's 2nd contemporaneous statement was taken at Isham's Flat, the Duffel Bag (containing the Drug Bundles) remained in the custody of Sgt Yogaraj between 11.10pm on 26 October 2016 and 4.40am on 27 October 2016.

70 During this period of time, however, the arresting CNB officers (including Sgt Yogaraj) had actually gone to two different locations with Isham and Aslinda. The sequence of events appears to be as follows:

(a) On 26 October 2016 at 11.15pm, the arresting CNB officers left Isham's Flat after their search of the premises was completed.

(b) The arresting CNB officers then proceeded to *Aslinda's flat in Woodlands* to search the place. However, nothing incriminating was found.

(c) Thereafter, the CNB officers left for the Woodlands checkpoint, which they arrived at around 12.15am the next day (*ie*, 27 October 2016). A K9 dog search and a 'backscatter scan' of the Black Fiat car was conducted, but nothing incriminating was found.

(d) The arresting CNB officers departed from the Woodlands checkpoint at around 12.46am. They arrived at the CNB HQ at about 1.05am.

(e) The next significant event was the processing of the Seized Exhibits in the EMR at 4.40am on 27 October 2016, as set out at [40(j)] above.

71 The events at [70(a)] and [70(c)]-[70(e)] above were set out in the conditioned statements of all the arresting CNB officers, including Sgt Yogaraj. However, the trip to Aslinda's Woodlands flat and the search of the place was not. Although this was not expressly stated in submissions, it is clear that the Prosecution must accept that the arresting CNB officers (especially Sgt Yogaraj) did travel to Aslinda's flat to search the premises after Isham's Flat had been searched and before they went to the Woodlands checkpoint. Otherwise, the Prosecution would simply have no account of the whereabouts of the Drug Bundles at the time. Apart from Sgt Yogaraj and Sgt Dadly who could not recall at trial that they had gone to search Aslinda's Woodlands flat, the other arresting CNB officers could in fact remember the said trip and search.

72 According to Isham, the arresting CNB officers' failure to mention the search of Aslinda's Woodlands flat in their conditioned statements is significant, as is Sgt Yogaraj's inability to recall the said search. It is submitted that as a result of these evidential gaps, there is simply no account as to the movement of the Duffel Bag (containing the Drug Bundles) for over more than an hour and where Sgt Yogaraj was when Aslinda's Woodlands flat was being searched.

73 In my view, however, the gap in Sgt Yogaraj's recollection falls short of creating a reasonable doubt that the drug exhibits eventually analysed by the HSA were not the Drug Bundles seized from the Black Fiat. Although Sgt Yogaraj could not specifically recall going to Aslinda's Woodlands flat between the visit to Isham's Flat and the trip to the Woodlands checkpoint, he did testify that he remained with the other arresting CNB officers during that period of time and that the Duffel Bag (containing the Drug Bundles) remained with him "all the way".

74 I accept that Sgt Yogaraj's evidence is not the most robust. There is nonetheless other material evidence which persuades me that there was indeed no mix-up in or tampering of the Drug Bundles during this period of time. Crucially, at the scene of Isham's arrest, the Drug Bundles had

already been placed by the arresting CNB officers in tamper-proof bags labelled according to the convention practised by the CNB Special Task Force. As discussed at [57] above, this made it highly unlikely that the Drug Bundles could be tampered with or somehow mixed up with other drug exhibits. As is discussed more fully in the next subsection, Sgt Yogaraj, ASP Peh and IO Bong all gave clear and consistent testimony that *subsequently*, at the EMR of the CNB HQ, it was Sgt Yogaraj who passed the Seized Exhibits to ASP Peh. ASP Peh then *verified* that the drug exhibits he received in the EMR were the Drug Bundles seized from the Black Fiat car by checking the labels and description of the exhibits recorded in the original Field Diary and the draft version of the police report prepared to account for the items seized ("**seizure report**") (although as mentioned in the next subsection, the documents themselves are not before the court). Significantly, Isham himself also expressly confirmed in his 3rd long statement that the drug exhibits which were marked and photographed by IO Bong in the EMR were indeed the Drug Bundles seized from the Black Fiat car.

75 Taking the preceding matters in [73] and [74] together, I am satisfied that the drug exhibits identified as being the Drug Bundles in the EMR were indeed the Drug Bundles seized from the Black Fiat car. In the circumstances, Sgt Yogaraj's inability to *specifically* recall going to Aslinda's Woodlands flat in the interim period is insufficient to raise a reasonable doubt as to the identity of the drug exhibits processed by IO Bong in the EMR.

#### *Exhibit processing in the EMR at the CNB HQ*

76 The chain of custody of the Drug Bundles in the EMR at the CNB HQ is set out at [40(j)]-[40(k)] above. It should be noted that apart from the Seized Exhibits and Isham's personal properties, there were other exhibits seized from other related persons being processed in the EMR at the same time. These other persons included Thamotharan and the three persons arrested in the Blue Honda car, as mentioned at [30] above. The other exhibits ("**Other Exhibits**") being processed with the Seized Exhibits also included drug exhibits.

77 Sgt Yogaraj testified that after arriving at the CNB HQ, he handed the Seized Exhibits and Isham's personal properties to ASP Peh in the EMR. ASP Peh corroborated that it was Sgt Yogaraj who handed the Car Exhibits, Flat Exhibits and Isham's personal properties to him in the EMR. IO Bong also confirmed that she witnessed this handover from Sgt Yogaraj to ASP Peh.

78 ASP Peh further testified that upon receiving the exhibits including the Drug Bundles, he verified their identity by checking their labels and description in the (original) Field Diary used during the operation and the draft version of the seizure report. I note, however, that neither Field Diary nor the draft version of the seizure report are before me. Only the final version of the seizure report is in evidence. The final version does record the items seized from the Black Fiat car, as well as the labels given to each item by the arresting CNB officers at the scene of Isham's arrest:

A) Car boot,

A1) 1 blue M1 recycle bag,

A1A) 2 white plastic bags, 1 red plastic bag and 1 orange plastic bag

A1A1) 1 packet of brown granular substances and 3 bundles of newspaper wrapped with transparent plastic

Nonetheless, this does not necessarily mean that the draft version of the seizure report also contained the same contents as its final version.

79 Ultimately, whilst neither the Field Diary nor the draft version of the seizure report are before me, I find ASP Peh's testimony to be credible and am satisfied that the identity of the Drug Bundles that were seized from the Black Fiat car had indeed been properly verified by ASP Peh in the EMR by reference to the labels and descriptions recorded in the said documents. IO Bong herself confirmed that she instructed ASP Peh to "tally the exhibit[s]" that had been received.

80 Thereafter, ASP Peh's evidence is that he handed the Seized Exhibits to IO Bong. IO Bong stated that she had the exhibits photographed and marked (according to her own system, which was used at trial as set out at [10] above and which was different from that used by the arresting CNB officers at the scene of Isham's arrest). The drug exhibits, including the Drug Bundles, were also weighed. IO Bong further testified that once all the exhibits had been processed, she locked them up in a cupboard in her office, which she also locked. Both the cupboard and her office could only be accessed by her. When asked whether there was a possibility of a mix-up between the exhibits (*ie*, the Drug Bundles and drug exhibits from the Other Exhibits), IO Bong replied "no" because they had already been placed in tamper-proof bags. There were also no exhibits from other cases present in the cupboard. In my view, ASP Peh and IO Bong's evidence was consistent and reliable, and I find there was no break in the chain of custody of the Drug Bundles at this stage.

81 Significantly, during the recording of Isham's 3rd long statement, he was shown photographs taken during the exhibit management process of the drug exhibits handled by ASP Peh and IO Bong. In his 3rd long statement, Isham clearly confirmed that:

...[T]he exhibits starting with A belongs to me. A1 is the blue M1 bag I used to put the 4 bundles in after I unwrapped them. A1A is the plastic bag containing the 4 bundles placed under my car boot. A1A1A1A, A1A1A1B, A1A1A1C and A1A1A1D are the 4 bundles I received in the white plastic bag. A1A1A1A is the bundle I removed the newspaper and clear plastic wrapped [*sic*] to check.

82 As discussed at [57] above, the arresting CNB officers at the scene of Isham's arrest had placed the Drug Bundles in *tamper-proof bags* which were individually *labelled* (according to their own CNB Special Task Force convention). This made it very unlikely that the Drug Bundles had been lost, tampered with or mixed up with other drug exhibits between the time of seizure and the handover in the EMR. In these circumstances, I agree with the Prosecution that Isham's confirmation as set out in his 3rd long statement above is highly probative. It indicates that the drug exhibits which were handled by ASP Peh and IO Bong in the EMR and marked and photographed by IO Bong as "A1A1A1A", "A1A1A1B1A1", "A1A1A1C1A1" and "A1A1A1D1A1" were indeed the original Drug Bundles seized from the Black Fiat car, rather than some other drug exhibit that had been mixed up with the Drug Bundles.

83 Isham nonetheless protests the manner in which the Seized Exhibits were handled in the EMR. According to Isham, it was never explained to him what items were being examined in the EMR and whether the drugs being weighed actually belonged to him. He argues that the onus is on the Prosecution to ensure that he was satisfied that the drugs being examined in the EMR were the very same drugs that were seized from him at the time of his arrest. The Prosecution has thus allegedly failed to establish that the drugs being examined and weighed in the EMR were the Drug Bundles seized from him. Isham also makes the following further points:

(a) There were other accused persons who were arrested at the same time or approximately same time as him. The drugs from the other arrests were also placed together in the EMR. No evidence (especially in the form of documentary proof) was adduced to show that the Drug Bundles had not been placed with drugs from other arrests and had been weighed separately.

(b) Isham had only torn open and inspected one of the Drug Bundles (this is presumably before his arrest). However, when the drug exhibits were laid out on the table in the EMR, Isham “saw that there were two items that were already open” and “[s]o [he] [did] not know whether those items belong to [him]” since there were other people arrested on the same day. He further said that “the things that were laid on the table were different form [*sic*] the things that were seized from me.” The Prosecution did not adduce any evidence to explain why two bundles of drugs were open in the EMR and which bundle belonged to which accused persons.

84 In my judgment, the above arguments are insufficient to suggest that there had been a break in the chain of custody of the Drug Bundles:

(a) IO Bong testified that during the exhibit management process, Isham was only asked to stand up to observe the weighing of the relevant drug exhibits and nothing else was communicated to him. Nevertheless, ASP Peh and IO Bong have both given clear and cogent evidence as to the manner in which the Seized Exhibits were handled in the EMR. The fact that the exhibit management process was not fully explained *personally* to Isham at the time is insufficient to undermine the chain of custody established by the evidence of ASP Peh and IO Bong.

(b) Furthermore, whilst there may have been other exhibits being processed in the EMR at the same time as the Seized Exhibits, Isham’s implied suggestion that there might have been a mix up remains speculative. As mentioned earlier, each tamper-proof bag containing the Seized Exhibits (including the Drug Bundles) had been labelled by the arresting CNB officers before being given to ASP Peh. The labels and descriptions of the exhibits were recorded in the Field Diary and the draft version of the seizure report, which ASP Peh used to verify the identity of the Seized Exhibits he received. After the Seized Exhibits were given to IO Bong, she then marked the exhibits according to her own system. It would therefore have been easy for the CNB officers to identify each exhibit by their label or marking such that the risk of a mix-up was minimal.

(c) I am unable to ascribe much weight to Isham’s submission that there were two drug exhibits already opened on the table in the EMR when he began observing the exhibit management process and there must therefore have been a break in the chain of custody of the Drug Bundles. When Isham’s claim was put to IO Bong at trial, her response was simply that she could not remember. However, she did not think she would have started examining the exhibits before Isham arrived because the whole point of having the arrested person present was to allow him to witness the entire process. Nevertheless, even if Isham’s claim is true, it is hardly sufficient to show that the Drug Bundles had been misidentified given ASP Peh’s and IO Bong’s detailed evidence as to the process in which *they* had verified, handled and marked the Seized Exhibits. That Isham may have only begun observing part of this process does not mean it was improperly carried out by the two officers.

85 In addition to the above, Isham raises several other contentions in respect of the handling of the Seized Exhibits in the EMR:

(a) There is no evidence that Sgt Yogaraj actually handed the Drug Bundles seized from the Black Fiat car to ASP Peh in the EMR “except [that] the Court must take their words for it”.

(b) Although ASP Peh claimed that he had verified the identity of the Drug Bundles before handing them over to IO Bong in the EMR, he could not show any documentation stating that he did so. Neither was there any documentation showing that ASP Peh had handed the Drug Bundles to IO Bong. The court only has ASP Peh’s word on the matter without any corroborative

evidence. Furthermore, ASP Peh “vacillate[d] between different versions” when asked to explain how he verified that the exhibits he received were those seized from the Black Fiat car. This showed that in fact, ASP Peh had not verified the identity of the exhibits he received with any documents.

(c) As for IO Bong, she testified that she took the Drug Bundles and put them in the cupboard inside her office. The cupboard was not locked although no one had access to her office. This was not recorded anywhere by IO Bong. Furthermore, IO Bong said that she kept the Seized Exhibits together with the Other Exhibits in the same cupboard. The possibility of a mix up was therefore “very high”.

86 Two clarifications should be made. First, Isham’s submission that ASP Peh had “vacillate[d] between different versions” when asked to explain how he verified the identity of the exhibits he received is misleading. As the Prosecution highlights, ASP Peh’s testimony was that he had relied on either the Field Diary and/or the seizure report to verify the identity of the exhibits. For the latter, it could either be the draft version or the final version of the report if it was ready. When Isham’s counsel pointed out to ASP Peh that the final seizure report was only lodged *after* ASP Peh’s inspection of the exhibits had been completed, ASP Peh then replied that this meant that he must have relied only on the draft seizure report. It is evident that there was simply no prevarication on ASP Peh’s part on the matter. Second, IO Bong’s testimony was that the Seized Exhibits were placed in a *locked* cupboard inside her locked office. It is unclear where Isham got the suggestion that the cupboard was unlocked. Furthermore, given that the Seized Exhibits were marked in tamper-proof bags, the concern that a mix up may have occurred while the exhibits were kept in IO Bong’s office is simply speculative.

87 More importantly, the crux of Isham’s contentions is that there are inadequate documentary records of the movement of the Drug Bundles in the EMR. There are no documentary records in evidence stating unequivocally:

- (a) that Sgt Yogaraj had passed the Drug Bundles to ASP Peh in the EMR;
- (b) that ASP Peh had verified that he had received the Drug Bundles and how he did so;
- (c) that ASP Peh handed the Drug Bundles to IO Bong; and
- (d) how IO Bong kept the Drug Bundles after the processing of exhibits was complete.

88 As the Court of Appeal remarked in *Affandi* (at [42]), the keeping of proper records will often obviate the need for the Prosecution to laboriously prove the chain of custody of the relevant drug exhibits by other means. That being said, the absence of documentary records does not in and of itself mean that the clear and credible testimony of the relevant CNB officers should be rejected. For the reasons discussed at [76]–[82] above, including Isham’s own admission in his 3rd long statement, I am of the view that the chain of custody in the EMR has satisfactorily been proven beyond a reasonable doubt notwithstanding the absence of documentary records.

#### *Submission of the Drug Bundles to HSA and their storage at HSA*

89 The final steps of the chain of custody are set out at [40(l)]–[40(m)] above. IO Bong’s evidence was that she submitted the Drug Bundles to the HSA for analysis on 28 October 2016, between 2.50pm and 2.51pm. This was corroborated by the HSA certificates issued by Joey Ng, which also confirmed that she received exhibits which were marked “A1A1A1A”, “A1A1A1B1A1”,

"A1A1A1C1A1" and "A1A1A1D1A1" (ie, the same markings given by IO Bong to the Drug Bundles) and sealed in tamper-proof bags. Joey Ng testified that when the Drug Bundles were received, the seals were intact for each of the Drug Bundles. They were thereafter stored securely in the manner set out at [40(m)] above pending their analysis.

90 I am satisfied that there was no break in the chain of custody at this stage. Nothing in Isham's case suggests otherwise, save for the alleged discrepancies in the weights measured by IO Bong and the HSA analyst Joey Ng (which I examine in the next subsection).

**Differences in the gross weight of the drugs measured by the CNB and the HSA**

91 Finally, Isham points to the alleged discrepancies between the gross weights of the drug exhibits measured by IO Bong and the gross weights of the drug exhibits analysed by HSA. It is said that these discrepancies indicate that the identity of the drug exhibits measured by HSA is in doubt. In support of this argument, Isham presented the following table in closing submissions:

<b>Exhibit</b>	<b>Gross weight measured by the CNB with wrapping</b>	<b>Gross weight measured by the HSA with wrapping</b>	<b>Difference in gross weights</b>
<b>A1A1A1A</b>	470.80g	450.9g	+19.9g (+0.957%)
<b>A1A1A1B1A1</b>	472.80g	450.9g	+21.9g (+0.954%)
<b>A1A1A1C1A1</b>	467.48g	452.1g	+15.38g (+0.967%)
<b>A1A1A1D1A1</b>	477.71g	451.5g	+25.6g (+0.945%)
<b>TOTAL:</b>	1,888.79g	1,805.4g	+82.78g (+3.823%)

92 Crucially, however, Isham's table does not cross-reference the underlying evidence from which he obtained the gross weights allegedly measured by the CNB. As the Prosecution points out, this is highly problematic because the only evidence available on this score appears to be IO Bong's conditioned statement. The gross weights measured by the CNB, as recorded in IO Bong's statement, are completely different from those stated in the table above. Given the lack of evidential basis for the figures used by Isham, I find myself entirely unable to rely on his table.

93 To my mind, the correct analysis is simply as follows:

<b>Exhibit Marking</b>	<b>Gross weight measured by the CNB ("W")</b>	<b>Gross weight measured by the HSA ("X")</b>	<b>Difference in gross weights ("Y", calculated by W - X)</b>	<b>Percentage difference in gross weight ("Z", calculated by Y / W)</b>
<b>A1A1A1A</b>	482.80g	Not less than 450.9g	31.9g	6.61%

<b>A1A1A1B1A1</b>	470.60g	Not less than 450.9g	19.7g	4.19%
<b>A1A1A1C1A1</b>	472.80g	Not less than 452.1g	20.7g	4.38%
<b>A1A1A1D1A1</b>	467.48g	Not less than 451.5g	15.98g	3.42%
<b>TOTAL:</b>	1,893.68g	Not less than 1,805.4g	88.28g	4.66%

For the avoidance of doubt, the figures in column W are the gross weights measured by IO Bong, as stated in her conditioned statement. It may also be noted that the total gross weight of the Drug Bundles measured by the CNB (*ie*, 1,893.68g) was also reflected in the charge read by IO Bong to the accused at the time of the recording of his Cautioned Statement.

94 In light of the preceding table, I accept that there were indeed some differences in the gross weights of the drug exhibits measured by the CNB and the HSA. As the Prosecution highlights, however, this is simply explained by the different weighing methods used by IO Bong and HSA analyst Joey Ng. The details of their different weighing methods are set out below:

(a) Each drug exhibit weighed by IO Bong comprised the granular/powder substance in question enclosed by its original plastic packet without any other external wrapping. For each exhibit, IO Bong weighed the *packet* of granular/powdery substance *together* with the tamper-proof bag in which it was sealed.

(b) On the other hand, HSA analyst Joey Ng weighed each packet of granular/powdery substance *without* the tamper-proof bag in which it was sealed. After doing so, she poured the granular/powdery substance out of the packet and weighed the empty packet alone. She obtained the weight of the granular/powdery substance by simply subtracting the weight of the empty packet from the weight of the packet with the granular/powdery substance. The resulting figure was then adjusted for measurement uncertainty to derive the final gross weight reported in the relevant HSA certificate.

95 This therefore explains why IO Bong's measurements were consistently higher than that of HSA. For each drug exhibit, IO Bong measured the weight of the granular/powdery substance *together with its original plastic packet and the tamper-proof bag* in which it was sealed. On the other hand, the measurements by HSA analyst Joey Ng of the gross weights of the drug exhibits in [93] above were based on the weight of the granular/powdery substance *alone*.

96 The difference in the total gross weights of the drug exhibits measured by the CNB and the HSA is 88.28g (*ie*, 1,893.68g less 1,805.4g). At trial, HSA analyst Joey Ng testified that the weight of the original plastic packet for each of the exhibits marked "A1A1A1A", "A1A1A1B1A1", "A1A1A1C1A1" and "A1A1A1D1A1" was 10.96g, 11.02g, 11.03g and 11.03g respectively. This adds up to a total of 44.04g.

97 The remaining difference in the total gross weights measured by the CNB and the HSA is hence 44.24g (*ie*, 88.28g less 44.04g). Unfortunately, as HSA analyst Joey Ng did not weigh the tamper-proof bag for each exhibit, it is not possible to conclusively determine if this remaining difference

exactly represents the weight of the four tamper-proof bags. Nonetheless, the difference of 44.24g is equivalent to only about 2.34% of 1,893.68g, *ie*, the total gross weight measured by the CNB. On the whole, I am of the view that this difference is not so significant as to create a reasonable doubt as to whether the granular/powdery substances weighed by IO Bong and the HSA were the same. This is especially in light of the detailed evidence establishing the Prosecution's chain of custody, as discussed at [56]–[90] above. I bear in mind that the weight of the four tamper-proof bags must be factored in. I am satisfied that ultimately, the difference in gross weights can be explained as simply being the weight of the four tamper-proof bags and/or attributed to differences in the accuracy in the weighing instruments used by the CNB and the HSA (in this regard, see for example *Public Prosecutor v Parthiban Kanapathy* [2019] SGHC 226 at [128]–[137]).

### ***Remaining evidential issues***

98 There are three remaining evidential matters raised by the parties. Whilst I discuss these matters as part of the analysis of the chain of custody, my conclusions here apply generally to all the issues in the present trial (*ie*, in respect of the chain of custody and the elements of the Charge).

99 The first matter is Isham's claim that he had given information about Thamotharan and Boy to IO Vinod, who recorded Isham's 8th and 9th long statements. It is alleged by Isham that IO Vinod failed to record in detail the information that Isham had given to him, including the fact that Boy would come to Singapore with Thamotharan. In this vein, Isham refers to the testimony of Anmbalagi d/o Ayah ("**Anmbalagi**"), an officer from the Immigrations and Checkpoint Authority ("**ICA**") who was called as a defence witness. According to Isham, ICA officer Anmbalagi had testified that there were records showing that Boy had entered Singapore with Thamotharan on several occasions. He submits that this is "wholly relevant as it goes towards the credibility of Isham that whatever...[he] was testifying was the truth except that the CNB Officers refused to believe and to investigate further whether there was [*sic*] such entries made by "Boy" with Thamo[tharan] to Singapore". I agree, however, with the Prosecution that the truth of Isham's aforementioned claim and Anmbalagi's testimony ultimately have little relevance to Isham's general credibility for the purpose of deciding whether the chain of custody or the elements of the Charge are established.

100 The second matter is an allegation by Isham which surfaced on the sixth day of trial on 11 August 2020. The allegation was that during the previous tranche on 25 June 2020, Sgt Yogaraj had been texting on his mobile phone while he was giving evidence on the witness stand. I find this allegation difficult to believe. As I remarked to parties at the time, I had been observing Sgt Yogaraj throughout his testimony and would have noticed if he had indeed been impermissibly using his mobile phone. I had noticed no such thing. On 14 August 2020, the Prosecution cross-examined Isham on this allegation at which point a different account was put forward. Isham said that he only saw Sgt Yogaraj *holding* onto his mobile phone while on the stand and that Sgt Yogaraj was typing on his mobile phone during the "break" in the trial. I do not think that this new allegation can gain any traction either as it was never put to Sgt Yogaraj. I only state for the record that whilst I do not accept these allegations by Isham, I have not taken them into account in my assessment of the evidence, including in respect of Isham's general credibility as submitted by the Prosecution. I am of the view that they are of minimal relevance to the chain of custody of the Drug Bundles and whether or not the elements of the Charge are made out.

101 The third matter is Isham's claim that after he was arrested, IO Bong had "tried to persuade [him] to co-operate with CNB". Isham said that during the recording of one of his statements, he had told IO Bong that he was depressed and wanted to commit suicide. IO Bong allegedly told him "[p]lease do not go to the gallows as we're giving you a second chance for the [*sic*] life" and that she would "put in a good word to the DPP with regard to his cooperation". On the stand, IO Bong



testified that she could not remember if Isham had said anything to that effect to her. She further denied making the alleged statements. Isham contends that IO Bong was lying because the Malay interpreter who was present during the statement-taking (one Shaffiq bin Selamat) supposedly recalled "such similar conversations between Isham and [IO] Bong taking place". It is said that this undermines the general credibility of IO Bong, but Isham did not go so far as to challenge the admissibility of any of the Statements on the basis that a threat, inducement or promise had been made.

102 On a close review of the transcripts, it seems to me that the only thing that Shaffiq could clearly recall was Isham telling IO Bong that he was depressed and would rather go to the gallows. It is apparent from Shaffiq's testimony as a whole that beyond that, he could not really remember whether the possibility of a "life sentence" or Isham's cooperation with the CNB was discussed between the two. In the circumstances, I do not think that Isham's claim has been sufficiently substantiated so as to impugn IO Bong's credibility in any material way. His claim is also entirely irrelevant to the elements of the Charge.

### ***Conclusion on the chain of custody***

103 Isham contended in his closing submissions that "two inconsistent narratives" had emerged at trial as to the chain of custody of the Drug Bundles seized from the Black Fiat car. He fails, however, to remotely explain what were the two inconsistent narratives he was referring to.

104 For the reasons given above, I am satisfied that the Prosecution has in fact established a single, unbroken chain of custody in respect of the Drug Bundles. The evidence shows that at the scene of Isham's arrest, the Drug Bundles were labelled by the arresting CNB officers and sealed in tamper-proof bags. When the exhibits were handed over by Sgt Yogaraj to ASP Peh at the EMR of the CNB HQ, ASP Peh verified the identity of the exhibits by checking the labels and descriptions recorded in the original Field Diary and draft seizure report. IO Bong then marked the exhibits according to her own system and had them photographed. When the photographs of the drug exhibits were shown to Isham during the recording of his 3rd long statement, he expressly confirmed that they showed the Drug Bundles seized from the Black Fiat car. The drug exhibits were securely kept by IO Bong until their submission to the HSA. In the premises, I find it proven beyond a reasonable doubt that the drug exhibits analysed by the HSA to contain not less than 52.88g of diamorphine were indeed the Drug Bundles seized from the Black Fiat car.

### **Whether the elements of the Charge are made out**

105 In my judgment, the available evidence also proves all the elements of the Charge beyond a reasonable doubt. Indeed, Isham unequivocally concedes the same in his closing submissions.

106 Starting with the first element of possession, it is not in dispute that Isham was the driver of the Black Fiat car at the material time. Isham's consistent position in his police statements, at trial and in closing submissions is that he did have the Drug Bundles in his possession. At trial, Isham testified that he collected the Drug Bundles and put them in the blue bag A1 before placing it in the boot of the Black Fiat car. This is corroborated by Insp David, who said that at the time of his arrest, Isham told him that the Drug Bundles were "[a]t the back of the car". Insp David and Sgt Dadly further confirmed that the Drug Bundles were found in the boot of the Black Fiat car.

107 Next, Isham also admits that he knew that the Drug Bundles contained heroin. He testified at trial that when he was arrested, Insp David asked him if he had anything to surrender and he replied that he had "obat" (meaning medicine) at the back of the Black Fiat car. When Insp David asked him

if it was "peh hoon" (which Isham understood to mean "heroin"), Isham said "yes". Insp David's account was materially similar. Insp David said that he simply asked Isham if he had anything to surrender and Isham replied that he had "peh hoon" at the back of the Black Fiat car.

108 In Isham's 1st contemporaneous statement, he was also questioned as to what the Drug Bundles were and he answered "peh hoon" (*ie*, heroin). Indeed, Isham continued to maintain in his closing submissions that he knew of the nature of the Drug Bundles. I therefore find that he did have such knowledge.

109 Lastly, I come to the element of trafficking. In Isham's Statements (except his 1st contemporaneous statement), Isham has consistently maintained that he had the Drug Bundles in his possession for the purpose of onward delivery to customers. At trial and in his closing submissions, Isham continued to state that the Drug Bundles were meant to be delivered to customers. Curiously, however, Isham had said in his 1st contemporaneous statement that the Drug Bundles were in fact meant for sale although he retracted this in his later police statements.

110 The Prosecution submits that on either account (*ie*, whether Isham was only delivering the Drug Bundles to customers or had also engaged in selling them), the element of trafficking is made out because both sale and delivery fall within the meaning of "trafficking" as defined in s 2 of the MDA. I agree and therefore also find that this element is proven beyond a reasonable doubt.

111 For completeness, I briefly address Thamotharan's alleged involvement in the transaction on 26 October 2016. As summarised at [13]–[29] above, Isham initially claimed in his earlier police statements that he had received the Drug Bundles by picking them up from underneath the Black Fiat car at the FEP Carpark on 26 October 2016. However, Isham later claimed in his 8th long statement and at trial that it was in fact Thamotharan who passed the Drug Bundles to him. I agree with the Prosecution that ultimately, it is irrelevant for the purpose of making out the Charge *how* or *from whom* Isham had obtained the Drug Bundles at the FEP Carpark. Neither is Isham's sole defence at trial dependent on how or from whom he received the Drug Bundles. Whichever of Isham's two accounts of Thamotharan's involvement is true, the fact remains that Isham possessed the Drug Bundles, knew that they contained heroin and intended to traffic in them.

## **Conclusion**

112 In summary, I find as follows:

- (a) It is proven beyond a reasonable doubt that the drug exhibits analysed by the HSA to contain not less than 52.88g of diamorphine were the Drug Bundles seized from the Black Fiat car.
- (b) All the elements of the Charge against Isham are proven beyond a reasonable doubt.

113 Isham is thereby convicted of the Charge. As mentioned earlier, where a person is convicted of an offence 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 of the MDA is death. The court nevertheless retains the discretion to apply the alternative sentencing regime in s 33B of the MDA if the conditions specified in that provision are met.

114 My only final remarks are these. In the course of the trial and in closing submissions, Isham's dissatisfaction at the perceived unfairness in the difference in treatment that he and Thamotharan had received was apparent to me. According to Isham's testimony, Thamotharan was the "right-hand man of Boy" and the person who delivered the Drug Bundles to him on the day of his arrest. As

alluded to at the start of this judgment, Thamotharan was initially charged in relation to the delivery of the Drug Bundles to Isham on 26 October 2016. However, before the start of trial, Thamotharan was granted a discharge not amounting to an acquittal on 20 April 2020 pursuant to the Prosecution's application. Isham appeared displeased that "Thamotharan [was] acquitted" while "[he was] the only one who [was] facing this capital charge".

115 I have stated Isham's unhappiness to complete the narrative of this case. Ultimately, however, under Article 35(8) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint), the Attorney-General has the power, exercisable at his discretion, to institute, conduct or discontinue proceedings for any offence. It is not for this court to address Isham's unhappiness or to speculate on the reasons for the difference in the treatment of Thamotharan and him.

116 In line with my remarks at [35]–[36] above, I heard parties on the issue of sentencing after I convicted Isham of the Charge and I reserved judgment.

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