

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC
OF SINGAPORE**

[2022] SGHC 132

Originating Application No 159 of 2022

Between

Mohammad Farid bin Batra

... Applicant

And

Attorney-General

... Respondent

EX TEMPORE JUDGMENT

[Administrative Law — Judicial review]

[Abuse Of Process — Collateral purpose]

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Mohammad Farid bin Batra

v

Attorney-General

[2022] SGHC 132

General Division of the High Court —Originating Application No 159 of 2022
Aedit Abdullah J
2 June 2022

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Aedit Abdullah J:

1 This application for leave to commence judicial review proceedings against the Respondent, heard on an urgent basis, unfortunately seems to be redolent of an attempt to game the judicial system, by delaying the carrying out of the sentence of caning imposed on the Applicant until after his 50th birthday, triggering the prohibition under s 325 of the Criminal Procedure Code 2010 (“CPC”). Leave is accordingly refused.

Background

2 The Applicant was convicted after trial on a charge of having in his possession for the purposes of trafficking drugs containing not less than 35.21 g of diamorphine. As he was found not to have been a courier and had not been given a certificate of substantive assistance, he was sentenced to death. In comparison, one Ranjit, who had been charged with trafficking by transferring

the drugs to him, was found to be a courier and granted a certificate of substantive assistance; Ranjit was sentenced to life imprisonment and 15 strokes of the cane. As it was, the Applicant's appeal to the Court of Appeal led to the upholding of his conviction, but the overturning of the finding by the trial court that he was not a courier: the Applicant was subsequently granted a certificate of substantive assistance and he was eventually sentenced by the Court of Appeal to life imprisonment and 15 strokes of the cane.

3 In April 2021, the Applicant sought review under s 394H CPC of the Court of Appeal's decision, asking that the conviction for trafficking be set aside; this was refused by the Court of Appeal, which found that the allegations raised were speculative and did not meet the threshold for review.

4 Then in January 2022, the Applicant filed an application for one Hafiz to be brought to court under the Prisons Act. No basis was found for this, and the Court of Appeal dismissed this application in April 2022, finding it was an abuse of process.

5 The Applicant now brings his application for leave to commence judicial review. Reading this far, one would perhaps have thought that the judicial review would have pertained to the decision concerning the diamorphine charge which led to the capital charge being imposed on him initially, which he then avoided by virtue of being a courier, and obtaining a certificate of substantive assistance.

6 However, that is not the case. The present application is not in respect of any decision concerning the criminal act underlying the charge he was convicted of and sentenced on, which one would have thought would have at least been somewhat germane. Instead the Applicant now complains of a

decision by the Public Prosecutor (“PP”) concerning another criminal act. As it was, aside from Ranjit passing drugs containing diamorphine to the Applicant, the Applicant passed a package of methamphetamine to Ranjit; Ranjit then passed it to one Mohamed Hafiz Bin Mohd Arifin, *ie*, the Hafiz who featured in the last application before the Court of Appeal. The Applicant was charged in respect of the methamphetamine, which did not attract capital punishment. This non-capital methamphetamine charge was stood down during the Applicant’s trial on the capital charge concerning diamorphine. Following his conviction on the diamorphine charge, the methamphetamine charge was withdrawn under s 147(1) CPC. This withdrawal operates as an acquittal on the methamphetamine charge. The acquittal stands unless the conviction on the diamorphine charge is set aside: s 147(2) CPC.

The Applicant’s Case

7 The Applicant essentially complains that it is unfair that Ranjit did not face the methamphetamine charge as well.

8 In his supporting affidavit, the Applicant says at paragraphs 12 and 13:

12 ... [W]hat’s really baffling is that as to why Ranjit was not charged for the offence he committed. Apparently, there are 2 extra charges that are supposed to convicted [sic].

[one charge of possession for purposes of trafficking, in methamphetamine, received from the applicant]

[one charge of trafficking in methamphetamine by handing the drug to Hafiz]

13 Ranjit admit [sic] that eh received the drug from the applicant and handed it to Hafiz. Only to his assertion that he did not know it was drug. He also admitted receiving the cash from Hafiz.

14. With the circumstances above, the applicant feels that the applicant was treated in a malicious and bad faith as to why the applicant was charged for the same offence whilst Ranjit was not.

9 In his written arguments, the Applicant argues that the application is not an attempt to delay caning, as the caning had been postponed several times from December 2020. There was also nothing, contrary to the Respondent's position, in court papers that Ranjit had been charged for the offence relating to methamphetamine. Whether the methamphetamine charge against the Applicant was withdrawn is irrelevant; in the words of the Applicant:

If the Public Prosecutor was willing to issue a Certificate of Substantive Assistance during the trial or thereafter, would the non-capital charges be withdrawn. Or the Public Prosecutor will raised [sic] up the Applicant [sic] antecedents before the Honourable Judge which can amount to the maximum of 24 strokes of the cane for the total charges.

This appears to be a complaint that there was a possibility of a conviction on the charge if not withdrawn, perhaps because of a certificate of substantive assistance being granted, with such conviction leading to heavier caning being imposed.

10 The Applicant also contends that compassion was shown to Ranjit, who would otherwise have been facing an additional charge of trafficking, with a sentence of at least five years' and five strokes of the cane. He could have faced another charge of possession for the purpose of trafficking with similar punishment. Ranjit could have faced two charges which were not 'documented' nor was he convicted of these. Ranjit should have faced life imprisonment and more caning, unless the charge was to be withdrawn.

11 In oral submissions, the Applicant said that previously, in respect of the earlier motion he pursued, he had in fact informed prisons that they could proceed with the caning, provided they were ready to be accountable if his sentence was reversed.

Summary of the Respondent's Case

12 The Respondent accepts that from its records, a charge of non-capital trafficking in methamphetamine was preferred against Ranjit. This charge was not however committed to the High Court for trial. Regardless, the application should be denied.

13 Leave should not be granted under the test in *Vellama d/o Marie Muthu v AG* [2013] 4 SLR 1 (“*Vellama d/o Marie Muthu*”) as the Applicant lacks sufficient interest as any supposed disparity was moot after the non-capital methamphetamine charge was withdrawn, nor was there any compelling issue of public interest.

14 Nor has the Applicant shown an arguable or *prima facie* case of reasonable suspicion pointing to the grant of the remedies sought. Article 12(1) requires that the Prosecution treat like cases alike, giving unbiased consideration and disregarding irrelevant considerations: *Ramalingam Ravinthran v AG* [2012] 2 SLR 49. Differential treatment must be justified. A person alleging unconstitutionality in the decision of the Attorney-General (“AG”) must produce *prima facie* evidence of the alleged unconstitutionality.

15 The evidence disclosed no malice and bad faith. The non-capital charge preferred against the Applicant played no role at trial or sentencing, and was thus irrelevant. The non-capital charge was stood down, and ultimately withdrawn.

16 The Respondent also pointed to procedural defects, including the relief sought and the invocation of the court’s supervisory jurisdiction.

17 It is argued given the history of the proceedings, the application being unmeritorious, and the timing, the primarily objective is the delay of the carrying out of the caning.

The Decision

18 I have not been persuaded that leave should be granted.

Analysis

The Issues Raised

19 The issues at play are:

- (a) Whether Ranjit did face a non-capital methamphetamine charge;
- (b) Whether the Applicant has sufficient interest in the matter;
- (c) Whether there is an arguable or *prima facie* case of reasonable suspicion that the remedies sought may be obtained; and
- (d) Whether there is abuse of process.

20 There is also a relatively minor issue as to the proper respondent. The applicant filed against the PP; the respondent appeared for the AG. I am of the view that the proper respondent is the AG, and so title this application.

Whether Ranjit faced a non-capital methamphetamine charge

21 The documents before the Court are not entirely clear on this issue. The respondent refers to a statement made by the Deputy Public Prosecutor (“DPP”) in Court at the conclusion of the trial of Ranjit, that Ranjit had some charges in

the state courts, which would be dealt with separately. The Applicant correctly contends this is not enough.

22 The Respondent is content, presumably because of the urgency, to take the point that irrespective whether such a charge was indeed preferred against Ranjit, the application should be refused. I have proceeded on the basis that it is not proven to the Court that there was such a charge against Ranjit. This basis is not entirely satisfactory, given that the records should be obtainable, but I accept that the Court should proceed on this basis given the urgency.

Sufficient Interest in the matter

23 What the Applicant must show is that he is somehow affected in a proximate way by the decision taken not to charge Ranjit, since otherwise, there would be little to govern or control the range of litigation that may be pursued.

24 I am satisfied that whether Ranjit faced a non-capital methamphetamine charge does not affect the applicant in any meaningful way so as to confer upon the Applicant sufficient interest in the decision. Such an effect would exist if the positions of the Applicant and Ranjit were otherwise alike and treated differently. But the fact of the withdrawal of the charge meant that the Applicant was not actually exposed to different treatment.

25 The Applicant's complaint really is that Ranjit was not exposed to the possibility of a conviction, and an additional sentence above what he received on the capital charge. But beyond a general interest in having like cases treated alike, and having criminals punished, or in the words used by the applicant in court, to have things done properly, it is hard to see how the applicant is affected in any way by the treatment of Ranjit given the withdrawal of the charge against him. Such a general and disembodied interest in having things done is

insufficient to establish a basis for allowing the application to proceed in judicial review: it may be a complaint that can be made; it may be that proper governance or proper processes should be followed. But judicial review is meant to guard propriety and proper decision making where a more direct harm occurs or is threatened, having some practical effect from the leave being granted. There is none here.

26 I note the Court of Appeal in *Vellama d/o Marie Muthu* recognised that there be occasions where no practical result would follow but leave should still be granted, if there are compelling issues of public interest affecting others in the former position of the Applicant. There is nothing of that nature here either.

27 Another question is what remedy is specifically being sought. The Applicant's arguments refer only vaguely to the unfairness that he alleges. However, any quashing of a decision by the AG in respect of not proceeding against Ranjit would not affect the Applicant's outcome or sentence at all, whether of imprisonment or of caning. If anything, pursuing the matter against Ranjit, may give rise to a complaint on Ranjit's part against the withdrawal of the charge against the Applicant, which may (leaving aside the precise legal mechanism) lead to the Applicant himself being exposed to a heavier sentence.

28 Furthermore, had any methamphetamine charge been preferred against Ranjit in separate proceedings, it could also have been withdrawn subsequently; this the Applicant himself recognises. Such a withdrawal is part of the general discretion given to the PP and any such withdrawal especially when Ranjit was already sentenced to life imprisonment, would not have been readily questioned. This likely outcome further attenuates what little interest the Applicant may have had in any review of the PP's decision not to prefer a methamphetamine charge against Ranjit.

Arguable or prima facie case

29 No arguable or prima facie case of reasonable suspicion has been made out. Even if the methamphetamine charge had been proceeded with against the Applicant but not Ranjit, their positions were not the same: they were not like cases. Aside from the charges they faced, their respective roles and even the degree of cooperation, or previous criminal conduct, would all be clearly relevant factors. The Applicant has not alluded to any evidence or argument showing that such factors either did not exist, or did not operate. The Applicant only refers to the perceived unfairness. That is not however evidence of bias or improper consideration, given the ready apparentness of possible justifications.

Abuse of process

30 The Applicant says that he had told prisons that they could proceed with caning if they were accountable if his sentence was reversed at the time. This was nothing more than a threat made by the Applicant to prisons, and was clearly meant to have the caning held off.

31 While the Applicant denies any attempt to game the system, pointing out to delays because of proceedings, it is clear that the last two applications to the Court of Appeal were entirely without merit. Given that he has already been chastised before by the Court of Appeal, for abuse of process, and given the absence of any semblance of a shadow of a phantom of a miniscule, ephemeral mote of any merit in the present application, the Applicant could not have had any expectation or genuine belief in the possibility of a successful claim. The only ready conclusion that can be reached is that the Application must have been mounted with the objective of securing a delay of the carrying out of the caning. The Applicant has abused the processes of the Court.

32 What is unsatisfactory is that nothing further appears to be available to the Court beyond this finding. If he were represented by a lawyer, the lawyer could expect substantial, severe consequences. The Applicant, being a prisoner serving his sentence of life imprisonment, in comparison, probably expects little downside from mounting such an application audaciously and brazenly devoid of any merit or hope. I would have to leave it to the executive and legislature to consider whether and what action can be taken in future instances of abusive applications by litigants and those advising, assisting, or egging them on.

Conclusion

33 The application is thus dismissed.

34 The Applicant has indicated he wished to consider the judgment before filing an appeal. In view of the circumstances, I order the following:

- (a) The appeal to be expedited;
- (b) Stay of execution of caning in the meantime, which is to lapse if an appeal is not filed by the stipulation below:
- (c) notice of appeal to be filed by 3 June 2022, 4 pm;
- (d) parties' submissions to stand for the appeal, subject to further directions by the Court of Appeal;
- (e) security for costs by the applicant dispensed with.

Aedit Abdullah
Judge of the High Court

The applicant in person;
Terence Chua, Jason Chua and Chong Yong (Attorney-General's
Chambers) for the respondents.