IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 58

Criminal Motion No 16 of 2021

Between

Mohammad Farid bin Batra

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Criminal review] — [Leave for review]

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Introduction

1 The applicant, Mr Mohammad Farid bin Batra, was convicted of a charge of possessing not less than 35.21g of diamorphine for the purpose of trafficking ("the trafficking charge"), an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") and punishable under s 33(1) of the same. He was sentenced to death initially by the High Court but was sentenced eventually by the Court of Appeal to life imprisonment and 15 strokes of the cane under s 33B(1)(*a*) of the MDA in the circumstances explained below.

2 The applicant is currently serving his life imprisonment sentence. In this criminal motion, the applicant, who is acting in person, is seeking leave pursuant to s 394H of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to

file an application for review of the Court of Appeal's decision, with a view to having the court set aside the conviction on the trafficking charge and substituting it with a conviction on a charge of possession of drugs under s 8(*a*) of the MDA.

3 The Court of Appeal comprised Sundaresh Menon CJ, Judith Prakash JA (now JCA) and me. I am dealing with this leave application as a single Justice of the Court of Appeal pursuant to s 394H(6)(*a*) of the CPC.

Brief factual and procedural background

4 On the night of 6 February 2014, the applicant drove his Singapore-registered car to meet his co-accused Ranjit Singh Gill Manjeet Singh ("Ranjit") who had parked his Malaysian-registered bus beside Block 610A Choa Chu Kang Way. Ranjit alighted from the bus and approached the applicant's car with a plastic bag in one hand. Through the open window at the front passenger side of the applicant's car, Ranjit placed the plastic bag containing the drugs on the front passenger seat. The applicant then passed Ranjit a package and thereafter, both men went their separate ways. Both were arrested subsequently.

5 The plastic bag contained five plastic packets. These five packets contained not less than 1,359.9g of substance, which was analysed and found to contain not less than 35.21g of diamorphine (or heroin): *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 at [11] ("High Court judgment").

6 The applicant admitted that he knew that the plastic bag contained heroin, that he intended to distribute the heroin and that he was to weigh and repack the heroin. However, he claimed that he was a mere courier acting on the instructions of one Abang and that he provided valuable information to the

Central Narcotics Bureau ("CNB"). The High Court convicted the applicant on the trafficking charge. The Judge found that the applicant had admitted to every element of the trafficking charge. The drugs were in his possession at the time of arrest. The applicant admitted that he knew the bag contained heroin and that he was going to use the electronic weighing scales and empty plastic bags found in his residence to repack the heroin for distribution. He would be paid for each pound of heroin that he repacked and delivered. Although he sought subsequently to clarify that he had assumed that the plastic bag contained heroin because the two previous consignments that he had received contained heroin, it was clear that he had actual knowledge of the nature of the drugs. In any event, he had not rebutted the presumption of knowledge in s 18(2) of the MDA: High Court judgment at [51]. Separately, Ranjit was convicted on an offence of trafficking under s 5(1)(*a*) of the MDA.

7 On the issue of sentence, the High Court noted that the applicant was not issued a certificate of substantive assistance: High Court judgment at [61]. The Judge also found that the applicant had not established on the balance of probabilities that he was only a courier. This was because he had, as a matter of routine, repacked drugs into smaller bundles. The applicant therefore could not satisfy the requirements for alternative sentencing under s 33B(2)(*a*)–(*b*) of the MDA and he was sentenced to death accordingly. Ranjit was found to be a courier and he had a certificate of substantive assistance. Accordingly, he was sentenced to life imprisonment and 15 strokes of the cane under s 33B(1)(*a*) of the MDA.

8 On appeal, the applicant argued that the Judge erred in: (a) finding that the applicant had failed to rebut the presumption of trafficking under s 17 of the MDA; and (b) failing to find that the applicant was a courier within the meaning of s 33B(2)(*a*) of the MDA.

9 On 26 March 2020, the applicant's appeal against conviction and sentence was dismissed by the Court of Appeal: *Mohammad Farid bin Batra v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 907 ("CA judgment"). The applicant's appeal against his conviction was untenable because, based on the evidence, it was "beyond dispute that he intended to traffic the drugs": CA judgment at [86]. In addition, the applicant's submissions on appeal that he had not formed the intention to traffic the heroin when he was arrested because he had not received instructions from Abang as to whether he should return the drugs to Abang or to deliver them to Abang's clients was found to be unmeritorious: at [90]. This was because the applicant did not adduce any evidence at the trial to establish that the heroin in his possession was for purposes other than delivery or distribution.

10 However, the CA judgment disagreed with the High Court judgment and concluded that the applicant was a mere courier within the meaning of s 33B(2)(*a*) of the MDA for this particular transaction. This was because Abang had not given any instructions as to what the applicant should do with the heroin and evidence of repacking drugs in prior transactions did not mean that the trafficker could not be a courier for that particular transaction: CA judgment at [94]. Nevertheless, since the applicant did not receive a certificate of substantive assistance, the court ordered the mandatory death penalty imposed by the High Court to stand.

11 A few months after the CA judgment was delivered, the Public Prosecutor decided to issue a certificate of substantive assistance to the applicant. The applicant then applied in CA/CM 23/2020 to request the Court of Appeal to exercise its inherent power to review its decision on sentence. On 7 September 2020, the Court of Appeal resentenced the applicant to life imprisonment and 15 strokes of the cane on account of the applicant having

been found to be a courier for the transaction in question and having received the certificate of substantive assistance.

The applicant's submissions

12 In this criminal motion, the applicant makes the following points in his handwritten affidavit and written submissions:

(a) He received a copy of the CA judgment dated 26 March 2020 only in the second week of October 2020. He argues that the copy of the CA judgment, coming into his possession after the Court of Appeal sentenced him to life imprisonment on 7 September 2020, could not be adduced with reasonable diligence before the Court of Appeal at that hearing. Upon reading the CA judgment, he has come to realise that the Court of Appeal "may have erred by overlooking significant point in relation to my culpability".

(b) He contends that the Court of Appeal erred in relying on similar fact evidence which was contrary to his defence. In the CA judgment at [15(d)], the court cited portions of the applicant's statements in which he stated that on 4 February 2014, he received two pounds of heroin from a Chinese woman and Abang instructed him to repack the heroin and to pass the packets to customers in two different areas in Singapore. The applicant also stated in his statements that Abang then called him to collect a consignment of methamphetamine from the same Chinese woman and to try to find buyers for this drug. The applicant did so accordingly but was unable to find any buyer.

(c) He argues that Ranjit was more than a mere courier and that he was in fact the Abang from whom he took instructions. The applicant

claims that he was instructed to transfer money to Ranjit's account. Having kept a consignment of methamphetamine on behalf of Abang, the applicant argues that he likewise lacked the requisite intention to traffic the heroin that was the subject of the trafficking charge. He relies on the bailment defence in the Court of Appeal's decision in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*"). In that case, the Court of Appeal held that the fact that the accused there had agreed to take on the bundles of drugs did not mean, without more, that he must have agreed to perform a delivery of the same. In that case, there was at least the reasonable possibility suggested by the defence of the accused that he was safekeeping the drugs with the intention of returning them to the person who passed him the drugs, either at 1pm or at the end of the work day: *Ramesh* at [87].

(d) He claims that the CNB used one Mohamad Hafiz bin Mohamad Arifin ("Hafiz") to entrap him and the CNB's investigations were "biased, one-sided, malice and bad faith".

The Prosecution's submissions

13 The Prosecution submits that the applicant's grounds of review are unmeritorious because the applicant has not set forth any material suggesting that there has been a miscarriage of justice. The application is founded on a misunderstanding of the CA judgment and the review process under the CPC. The Prosecution makes the following points:

(a) The CA judgment does not form part of the body of material which this court would have considered in determining the applicant's appeal against conviction. It therefore cannot amount to "sufficient material" under s 394J(2) of the CPC.

(b) The applicant is repeating his arguments made in the CA judgment, namely that he might have been instructed to return the drugs to Abang rather than to traffic them. However, at the trial, the applicant did not dispute the trafficking charge and in fact admitted every element of the offence. He only sought to show that he had cooperated with the CNB and had given valuable information: see High Court judgment at [51]. The applicant's evidence also showed that he was waiting for Abang's instructions on repackaging and delivery of the heroin to Abang's clients: see CA judgment at [84]. At the trial, the applicant confirmed that the statements reflected the truth of his involvement with the heroin and that he was relying on the statements in their entirety for his defence. The applicant appears to think that trafficking is synonymous with selling only and that it does not include sending the drugs. This is a misunderstanding of the law. Whether Ranjit was in fact Abang was not relevant to the applicant's conviction on the trafficking charge.

(c) The judgment in *Ramesh* was delivered on 15 March 2019, more than a year before the CA judgment was delivered on 26 March 2020, and therefore could not be sufficient material within the meaning of s 394J(3) of the CPC. In any case, the bailment defence was argued and rejected in the CA judgment at [87] to [90].

(d) The applicant's claims regarding entrapment and the role of Hafiz are speculative and irrelevant. In his submissions, the applicant refers to Hafiz only in the context of the methamphetamine transaction and not the trafficking charge in question. Hafiz's involvement was set out in the statement of agreed facts at the trial. Hafiz boarded Ranjit's bus after the meeting between the appellant and Ranjit and he did not

feature in the narrative relating to the trafficking charge. The applicant's assertions that the CNB somehow entrapped him using Hafiz are made without any basis and are irrelevant to the trafficking charge. Hafiz did not feature at the trial or at the appeal.

My decision

14 An applicant who seeks the leave of the Court of Appeal to review its earlier decision pursuant to s 394H of the CPC must show a "legitimate basis for the exercise of the court's power of review": *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 ("*Kreetharan*") at [17]. The high threshold to cross in a review application reflects the reality that the criminal matter, at this juncture, has already been heard at least twice. Thus, an application for leave to make a review application is subject to the strict conditions set out in s 394J of the CPC which provides:

> …
>
> (2) The applicant in a review application must satisfy the appellate court that there is sufficient material (being evidence or legal arguments) on which the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made.
>
> (3) For the purposes of subsection (2), in order for any material to be 'sufficient', that material must satisfy all of the following requirements:
>
> > (*a*) before the filing of the application for leave to make the review application, the material has not been canvassed at any stage of the proceedings in the criminal matter in respect of which the earlier decision was made;
> >
> > (*b*) even with reasonable diligence, the material could not have been adduced in court earlier;
> >
> > (*c*) the material is compelling, in that the material is reliable, substantial, powerfully probative, and capable of showing almost conclusively that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made.

> (4) For the purposes of subsection (2), in order for any material consisting of legal arguments to be 'sufficient', that material must, in addition to satisfying all of the requirements in subsection (3), be based on a change in the law that arose from any decision made by a court after the conclusion of all proceedings relating to the criminal matter in respect of which the earlier decision was made.
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> (5) For the purposes of subsection (2), the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made, only if —
>
> > (*a*) the earlier decision (being a decision on conviction or sentence) is demonstrably wrong; or
> >
> > (*b*) the earlier decision is tainted by fraud or a breach of the rules of natural justice, such that the integrity of the judicial process is compromised.
>
> (6) For the purposes of subsection (5)(*a*), in order for an earlier decision on conviction to be 'demonstrably wrong' —
>
> > (*a*) it is not sufficient that there is a real possibility that the earlier decision is wrong; and
> >
> > (*b*) it must be apparent, based only on the evidence tendered in support of the review application and without any further inquiry, that there is a powerful probability that the earlier decision is wrong.
>
> …

15 It is quite clear from all that is set out above that the applicant is not seeking to adduce any new evidence. In relation to the legal arguments regarding similar fact evidence and the claim that the applicant was merely safe-keeping the drugs, the applicant has re-characterised the evidence that was led at the trial or is merely repeating the contentions about the bailment issue in his own words. Such repackaging of the evidence or of the legal arguments do not qualify as sufficient material under s 394J(3)(*a*) of the CPC.

16 The applicant's arguments regarding entrapment are entirely speculative and do not arise from any new evidence or any new law in any event. Hafiz's involvement with the co-accused persons on the night in question was disclosed

in the statement of agreed facts adduced at the trial. The applicant therefore knew about Hafiz and what his role was. In spite of this, the applicant is contending for the first time here that Hafiz is somehow relevant to his case.

17 In relation to the applicant's contention that he received a copy of the CA judgment dated 26 March 2020 only months after its delivery in court, the court's record shows that the applicant's then Defence Counsel acknowledged receipt of a copy of the CA judgment soon after its delivery. In any case, I do not see how the alleged lateness in receiving the CA judgment demonstrates a miscarriage of justice within the ambit of s 394J of the CPC.

18 The applicant's submissions appear to suggest that the fact that a copy of the CA judgment came to him only after he was brought before the Court of Appeal for review of his death sentence meant that the CA judgment was new evidence within the meaning of s 394J(3) of the CPC or amounted to "a change in the law that arose from any decision made by a court after the conclusion of all proceedings relating to the criminal matter in respect of which the earlier decision was made" specified in s 394J(4). If so, this would be a complete misunderstanding of what those statutory provisions mean. The CA judgment cannot possibly be new evidence because it was the document that contained the Court of Appeal's decision and was not material adduced to prove facts. It is also simply not logical that the CA judgment is the new law which justifies the application to impugn that very same judgment. Further, the applicant is not saying that the CA judgment changed the law in any way. He is merely contending that the CA judgment contained errors pertaining to his culpability.

19 Similarly, there can be no serious argument that *Ramesh* constitutes new law within the meaning of s 394J(4) since that case was decided more than one year before the CA judgment here. In so far as the applicant is now arguing that

the CA judgment was wrong in concluding that he was trafficking in the heroin and was not merely a bailee of the drugs for Abang, this is nothing more than a repetition of factual arguments which have been considered and rejected in the CA judgment at [87] to [90]. The applicant is attempting a second appeal, something clearly not allowed under the CPC.

20 A proper reading of the CA judgment will show that it did not use similar fact evidence to justify the applicant's conviction. His prior involvement in drug activities was spelt out in his own statements but the Prosecution did not even need to use this to prove the trafficking charge. As mentioned earlier, at the trial, the applicant admitted every element of the trafficking charge and sought merely to show that he deserved a certificate of substantive assistance. In fact, the CA judgment gave the applicant the benefit of the doubt when it considered the admitted past trafficking and held at [94] that "evidence of repacking drugs in previous transactions did not mean that the trafficker could not be a courier for the particular transaction that he is charged for". Accordingly, the CA judgment disagreed with the High Court judgment by holding, on a balance of probabilities, that the applicant was a mere courier in this particular trafficking offence.

Conclusion

21 Under s 394H(7) of the CPC, a leave application may, without being set down for hearing, be dealt with summarily by a written order of the appellate court. Before summarily refusing a leave application, s 394H(8) of the CPC requires the appellate court to consider the applicant's written submissions (if any) and the appellate court may, but is not required to, consider the Prosecution's written submissions (if any). Having considered both parties' submissions, I hold the view that the grounds raised by the applicant fail to meet

the conjunctive requirements set out in ss 394J(3)–(4) of the CPC and there is therefore clearly no "sufficient material" under s 394J(2) of the CPC on which it may be concluded that there has been a miscarriage of justice. The application here raises no new evidence or new legal arguments to justify granting leave to review the CA judgment. Leave to make a review application is therefore refused summarily without the need for a hearing and the application is dismissed accordingly.

Tay Yong Kwang
Justice of the Court of Appeal

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