IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2015] SGHC 3

Criminal Revision No 18 of 2014

Between

PUBLIC PROSECUTOR

… *Applicant*

And

YANG YIN

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing]—[Revision of Proceedings]
[Criminal Procedure and Sentencing]—[Bail]

Public Prosecutor
v
Yang Yin

[2015] SGHC 3

High Court — Criminal Revision No 18 of 2014
Sundaresh Menon CJ
10, 11 November 2014

8 January 2015

Sundaresh Menon CJ:

Introduction

1 This was an application made by the Public Prosecutor ("the Prosecution") under s 400 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") seeking revision of the order made by the learned District Judge on 6 November 2014 offering bail to Yang Yin, the respondent, at the sum of $150,000 with one surety or $75,000 with two sureties.

2 After hearing the parties on 10 November 2014, I reserved the matter to consider the various submissions made by both parties. On 11 November 2014, I allowed the application and directed that the order granting bail be revoked. I now set out the detailed grounds for my decision.

Background facts

3 On 31 October 2014, the respondent was charged in the State Courts with 11 counts of falsification of accounts under s 477A of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code").

4 At a further mention on 5 November 2014, the Prosecution tendered 320 fresh charges under s 477A against the respondent. The charges relate to the respondent's alleged falsification of receipts when he was a director of Young Music & Dance Studio Pte Ltd.

5 The respondent is a foreign national and questions arose as to bail.

6 The principal grounds raised by the Prosecution and put forward in the evidence of the investigating officer before the District Judge and before me included the following:

(a) The respondent had been charged with several counts under s 477A of the Penal Code which is a non-bailable offence. In the circumstances it was incumbent on the respondent to discharge the burden of proving that bail was appropriate, rather than on the Prosecution to prove that it was not;

(b) The respondent had slender ties to Singapore. Not only was he not a national, his family members were all abroad. He was therefore a flight risk and no material had been put forward to satisfy the court that he was not;

(c) It appeared from the evidence that the bail money that was expected to be made available would come not from bailors resident and rooted in Singapore but from the respondent's family members in

China. This, it was said, went against the rule that bailors had to put their own assets at risk and not be put in funds by or on behalf of those seeking bail;

(d) It appeared that the respondent had caused a sum of around $500,000 to be transferred to his father's bank account in China and this fact had not been volunteered by the respondent but only emerged from investigations;

(e) If the respondent fled the jurisdiction, it appeared he would have the means to live comfortably in China; and

(f) There was reason to believe that the respondent had access to other sources of funds and had not been forthcoming to the investigating officers about his sources of and access to funds.

7 After hearing the parties' submissions, the District Judge reserved judgment. On the next day, 6 November 2014, the District Judge granted bail on the terms noted at [1] above.

8 I should note so as to provide the context to the discussion of the District Judge's decision in the following section that the respondent had been granted a lasting power of attorney over the property of one Mdm Chung Khin Chun ("Mdm Chung") including her bank accounts. The respondent has been involved in a civil dispute concerning the validity of the power of attorney and a Mareva injunction had been granted in conjunction with those proceedings.

The decision below

9 In summary, the District Judge decided to grant bail for the following reasons:

(a) The number of charges did not add significantly to the seriousness of the charges. The many false receipts issued by the respondent were to be seen as part of a single composite picture in that these had all been generated by him to give the impression of a thriving business so as to enhance his prospects of obtaining permanent residence in Singapore.

(b) The investigating officer had highlighted that a sum of $500,000 had been transferred from an account belonging to Mdm Chung to the respondent's father. However, it could not be inferred from the mere fact of the transfer that this had taken place without Mdm Chung's authorisation or that this was in breach of trust.

(c) Although the respondent had no roots in Singapore, that did not necessarily prohibit him from being admitted to bail as otherwise all foreigners in Singapore once charged would not be admitted to bail.

(d) The respondent had good reasons to stay in Singapore. In particular, he would wish to contest the ongoing civil litigation and also to avail himself of the opportunity to free his assets from the Mareva injunction.

10 The District Judge also held that he would leave it to the bail centre to assess the suitability of the bailor(s) and appeared to regard it as immaterial that the bail money might emanate from abroad. Bail was granted at $150,000 with one surety or $75,000 with two sureties with the following additional conditions:

(a) The sureties must be Singaporeans;

(b) The respondent must surrender any travel document in his possession; and

(c) The respondent must report to the investigating officer daily at 10:00am.

My decision

The respondent's preliminary objection

11 It may be noted that the Prosecution brought an application for revision rather than an appeal against the decision of the District Judge. Counsel for the respondent, Mr Wee Pan Lee ("Mr Wee"), first raised a procedural objection to the Prosecution's application for criminal revision under s 400 of the CPC. Mr Wee submitted that an application for criminal revision could only be brought in a narrow band of cases. In support of this submission he relied on s 400 of the CPC which provides:

> **Power to call for records of State Courts**
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> **400**.—(1) Subject to this section and section 401, the High Court may, on its own motion or on the application of a State Court, the Public Prosecutor or the accused in any proceedings, call for and examine the record of any criminal proceeding before any State Court to satisfy itself as to the correctness, legality or propriety of any judgment, sentence or order recorded or passed and as to the regularity of those proceedings.
>
> (2) No application may be made by any party under this section in relation to any judgment, sentence or order which he could have appealed against but had failed to do so in accordance with the law unless the application is made —
>
> (*a*) against a failure by a court to impose the mandatory minimum sentence or any other sentence required by written law; or
>
> (*b*) against a sentence imposed by a court which the court is not competent to impose.

12 Mr Wee relied on s 400(2) and argued that the s 400 procedure was not available to the Prosecution because it could have appealed against the District Judge's order, and the present application did not fall within the scope of the exceptions stipulated in ss 400(2)(*a*) and 400(2)(*b*) of the CPC. Mr Wee contended that the Prosecution could have appealed against the decision of the District Judge in accordance with ss 374(1) and 380 of the CPC which state:

> **When appeal may be made**
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> **374**.—(1) An appeal against any judgment, sentence or order of a court may only be made as provided for by this Code or by any other written law.
>
> …
>
> **Appeal specially allowed in certain cases**
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> **380**.—(1) The appellate court may, on the application of any person debarred from appealing for non-compliance with any provision of this Code, permit him to appeal against any judgment, sentence or order if it considers it to be in the interests of justice, subject to such terms and conditions as the court thinks fit.
>
> (2) The appellate court may, on the application of the accused or his advocate, or the Public Prosecutor, permit an appeal to proceed to hearing without the grounds of decision, if the court considers it to be in the interest of justice and for reasons beyond the control of either party, subject to such terms and conditions as the court thinks fit.

According to Mr Wee, the decision of the State Court to grant bail in the sum of $150,000 was an order within the meaning of s 374(1) of the CPC and was therefore appealable.

13 I did not agree that the District Judge's order was an order that could be appealed against. Section 377(1) of the CPC elaborates on the basis for appeal in the following terms:

> **Procedure for appeal**
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> **377**.—(1) Subject to sections 374, 375 and 376, a person who is not satisfied with *any judgment, sentence or order* of a trial court in a criminal case or matter to which he is a party may appeal to the appellate court against that *judgment, sentence or order* in respect of any error in law or in fact, or in an appeal against sentence, on the ground that the sentence imposed is manifestly excessive or manifestly inadequate.
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> [emphasis added]

14 The Court of Appeal in *Mohamed Razip and others v Public Prosecutor* [1987] SLR(R) 525 ("*Mohamed Razip*") considered the meaning and effect of the words "judgment, sentence or order" in s 247 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the 1985 CPC"), which is the predecessor provision of s 377(1) of the CPC. The court concluded in that case that a bail order was not a judgment, sentence or order within the meaning of the provision (at [18]):

> 18 … We are of the view that an order made on a bail application by a Subordinate Court does not come within the meaning of the words "any judgment, sentence or order pronounced by any district court or magistrate's court in a criminal case or matter" contained in s 247 of the Criminal Procedure Code. It is certainly not a judgment or sentence, and neither is it an "order".

15 The court then cited the decision of Whitton J in *Gng Eng Hwoo v Regina* [1954] MLJ 256 which concluded that an order in relation to the ownership of a boat lacked the quality of finality necessary to come within the meaning of the word "order" appearing in a provision similar in terms to s 241 of the 1985 CPC. This provision is similar to s 374(1) of the present CPC which has been cited above at [12].

16 The decision of the Court of Appeal in *Mohamed Razip* was binding on me and I was therefore unable to accept Mr Wee's contention that the State

Court decision to grant bail was appealable as an order within the meaning of s 374(1) of the CPC. In any event, no reason was advanced by Mr Wee to justify departing from this interpretation. It followed that an order granting bail was not an appealable order.

17 The same view was taken in *Public Prosecutor v Sollihin bin Anhar* [2014] SGHC 228 ("*Sollihin*"), where Tay Yong Kwang J cited *Mohamed Razip* and held (at [29]) that a decision on bail was interlocutory in nature and would generally be regarded as a non-appealable order. Mr Wee in oral submissions pointed out that the decision of *Sollihin* on this point appeared to have rested on a point that was agreed between the parties (see *Sollihin* at [14]); but this did not detract from the fact that the position laid down in *Mohamed Razip* seemed to be settled.

18 There is an ancillary point to be made concerning s 97 of the CPC, which provides as follows:

> (1) Whether there is an appeal against conviction or not, the High Court may grant bail to any accused before it, release him on personal bond or vary the amount or conditions of the bail or personal bond required by a police officer or a State Court, and impose such other conditions for the bail or personal bond as it thinks fit.
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> (2) At any stage of any proceeding under this Code, the High Court may cause any person released under this section to be arrested and may commit him to custody.

19 Both parties agreed that this provision was not applicable in the present circumstances because the subject matter of the application was not to *seek* the grant of bail, or the release of the respondent on a personal bond or a variation of the amount or conditions of bail (see generally *Sollihin* at [26]–[28]). Indeed, both the Prosecution and the respondent agreed that the provision did

not apply where the order sought was a *revocation* of bail. Accordingly, there was no basis for this court to exercise its powers under that provision.

20 The remaining question was whether there was a right to seek revision under s 400 of the CPC. This question also was recently considered and it was answered in the affirmative in *Sollihin* at [29]–[30]. In that case, Tay J found that the High Court's power of revision in respect of criminal proceedings was found in s 23 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), as well as s 400 of the CPC. It was held that the revisionary powers of the High Court in respect of criminal proceedings could be exercised over any judgment, sentence, or order recorded or passed by the State Courts. Tay J found that s 400(2) was inapplicable to exclude the High Court's revisionary power because a bail decision is a non-appealable order, and concluded that the revisionary powers of the High Court were "sufficiently broad so as to allow it to reverse a State Court's decision to grant bail to an accused" (at [30]).

21 I agreed with both the reasoning and conclusion reached by Tay J in *Sollihin*. There was however one further observation that came to mind as I considered this application. This concerned the words "judgment, sentence or order" which may be found in s 400 of the CPC. I had earlier concluded that an order made on a bail application did not come within the same words found in s 377 of the CPC because it lacked the necessary quality of finality. If the same words must mean the same thing in each of these sections, it might be argued (although this argument was not raised before me) that the High Court could have no revisionary powers with respect to orders made on bail applications because these orders lacked the same necessary quality of finality and so could not come within the ambit of the words "judgment, sentence or order" in s 400 of the CPC.

22 Having considered the matter, I do not think that these words can be interpreted in the same way in both provisions. Section 400 of the CPC is found in "Division 3–Revision of proceedings before State Courts" and the word "order" there should be read purposively to include any order that is liable for revision under the powers conferred in s 401(2) of the CPC. On the other hand, s 377 is found in "Division 1–Appeals" which is concerned with the issue of when an appeal might be brought and, correspondingly, with the finality of orders.

23 I would also point out that an applicant must satisfy a high threshold in order successfully to invoke the wide powers of revision available under the CPC (see [25] below). This high threshold not only deters frivolous applications from being brought but also suggests that once the threshold has been met, the court should be in a position to exercise its wide powers even in relation to orders that are not final in nature. The operative concern in an application for revision, as I note below, is the avoidance of serious injustice and this should not be thwarted because an order may be seen to lack finality in some respects. I was therefore satisfied that a bail order did fall within the ambit of the court's revisionary power under s 400 of the CPC.

24 For these foregoing reasons, I dismissed the preliminary objection raised by Mr Wee on behalf of the respondent.

Principles governing the exercise of revisionary powers

25 Having decided that this court could exercise powers of revision in the present case, the next question that arose for consideration was whether I should exercise those powers. It is settled law that the threshold is that of "serious injustice" and that revisionary power should be exercised "sparingly"

(see *Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR(R) 383 at [47]). The requirement of serious injustice was explained by Yong Pung How CJ in the High Court decision of *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929 at [17] in the following terms:

> 17 … there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. But generally it must be shown that there is *something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below.*
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> [emphasis added]

26 A similarly high threshold for intervention was also recognised in *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196 at [19] where it was stated:

> 19 … The court's immediate duty is to satisfy itself as to the correctness, legality or propriety of any order passed and as to the regularity of any proceedings of that subordinate court. However, this is not sufficient to require the intervention of the courts on revision. The irregularity or otherwise noted from the record of proceedings must have resulted in *grave and serious injustice.*
>
> [emphasis added]

27 With these principles in mind, I turn to the facts at hand.

Application to the facts

28 In my judgment, the learned District Judge erred in the following important respects.

29 The first error concerned the burden of proof. Since the respondent was charged with non-bailable offences under s 477A of the Penal Code, bail was not available to the respondent as of right although the court might in its

discretion decide to offer bail (see *Fatimah bte Kumin Lim v Attorney-General* [2014] 1 SLR 547 at [24]). The onus was therefore on him to show that bail should nonetheless be extended to him (see *S Selvamsylvester v Public Prosecutor* [2005] 4 SLR(R) 409 at [22]). This may be contrasted with a situation where bail is available as of right for bailable offences (see s 92 of the CPC). Although the District Judge was aware of this distinction, it appears that he ultimately did not take it into account when considering the facts of the bail application. I shall elaborate on this by setting out the events that transpired in the court below as well as the District Judge's reasoning found in the notes of evidence.

30 As mentioned, the onus was on the respondent to show that bail should be extended to him. The respondent could have advanced his cause by establishing, for example, that the risk of absconding is low (see [44] below for other usual bail considerations). Despite this burden, the respondent did not adduce any evidence to establish that bail should be extended in his favour. He instead relied on bare assertions such as his intention to remain in Singapore to contest his civil suits and his alleged intention not to breach orders of the court. These assertions somehow found favour with the District Judge who held that the respondent had "good reasons to stay in Singapore in order to contest the ongoing civil litigation and also to avail himself the opportunity to get his assets freed from the Mareva injunction".[1] With respect, this was speculative to begin with and the respondent did not even file an affidavit testifying to the same.

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1 Notes of Evidence DAC-923802-2014 & OTHERS, 06/11/2014 at p 7.

31 In contrast to the flimsy case advanced by the respondent, the Prosecution adduced cogent evidence to support their case that bail should not be granted to the respondent. The Prosecution referred to evidence of two transfers which took the form of a debit note, a bank statement, and a Society for Worldwide Interbank Financial Telecommunication (SWIFT) advice. The evidence established that a sum of approximately $500,000 had been transferred from the respondent's Singapore bank account to Mdm Chung's account ("the First Transfer"). A second transfer of an almost identical amount was then made on the same day from Mdm Chung's account to an account in China that apparently belonged to the respondent's father ("the Second Transfer"). These transfers were relevant to the determination of bail because they went some way towards showing that the respondent was a flight risk since he might have access to substantial funds in China if he fled this jurisdiction. They also showed that the respondent had been less than candid before the court below because he did not disclose or explain the Second Transfer even though the District Judge raised questions specifically directed to this at the hearing on 5 November 2014. More details of the Second Transfer only came to light after the second affidavit of the investigating officer was filed on the following day, which then led to the respondent changing his line of argument and submitting instead that the transfer was not unauthorised or subject to criminal proceedings.

32 The District Judge appeared to have accepted the respondent's submission in this regard. He held that the Second Transfer was "neither here nor there"[2] and that it could not be inferred from this transfer that the movement of monies was without Mdm Chung's authorisation or in breach of

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2 Notes of Evidence DAC-923802-2014 & OTHERS, 06/11/2014 at p 6.

trust. This might well be true in one sense, but with respect, it reflected an erroneous approach because the District Judge was in effect placing the burden on the Prosecution to adduce further evidence of the respondent's wrongdoing. The question before the District Judge was *not* whether the respondent was guilty of a charge of criminal breach of trust. The issue at hand was whether to extend bail to the respondent with regard to the usual considerations of bail (see the discussion at [44]–[46] below) and the District Judge erred because he should have directed his mind to the question of whether the respondent had discharged his burden of proof. Nowhere in the reasoning of the District Judge was it evident what he made of the concerns raised by the Prosecution arising from the transfer of funds that:

(a) it suggested that the respondent was a flight risk; and

(b) the respondent had not been candid or forthcoming in disclosing matters pertaining to an issue that had specifically been raised during the proceedings.

33 In my judgment, there was no evidence before the District Judge to warrant his arriving at the conclusion that the respondent's burden of proof had been discharged. Indeed, in my judgment the District Judge arrived at the conclusion he did because he erroneously placed the burden of proof on the Prosecution.

34 There was also a second error. The District Judge seemed to have placed little weight on the admitted fact that the bail money would not be that of the Singaporean sureties but would have been channelled to the sureties from the respondent's parents who resided in China. It appears that the District Judge considered this fact to be merely an administrative detail that was not relevant to his assessment of whether to grant bail and he was content to leave

it to the bail centre to assess the suitability of the sureties. The authorities cited in the following paragraphs demonstrate that the District Judge erred in this respect because the source of bail monies has an important effect on the "pull of bail", a concept that stands at the heart of the concept of bail.

35 In *Public Prosecutor v Ram Ghanshamdas Mahtani and another action* [2003] 1 SLR(R) 517 at [9], Yong CJ agreed with and adopted the following observations of Lord Widgery CJ in *R v Southhampton Justices, ex parte Corker* (1976) 120 SJ 214:

> … The real pull of bail, the real effective force that it exerts, is that it may cause the offender to attend his trial rather than subject his nearest and dearest who has gone surety for him to undue pain and discomfort. …

36 The pull of bail was also considered and explained as follows by the English Court of Appeal in *Herman v Jeuchner* (1885) 15 QBD 561 ("*Herman*") at 563:

> … In the present case the defendant required the plaintiff to deposit 49*l* for the space of two years, and in consideration of the plaintiff so doing the defendant promised the plaintiff to become a surety for him: the plaintiff on his part undertook to deposit the 49*l*. That is the substance of the contract; is it illegal? To my mind it is illegal, because it takes away the protection which the law affords for securing the good behaviour of the plaintiff. When a man is ordered to find bail, and a surety becomes responsible for him, the surety is bound at his peril to see that his principal obeys the order of the Court: at least, this is the rule in the criminal law; *but if money to the amount for which the surety is bound is deposited with him as an indemnity against any loss which he may sustain by reason of his principal's conduct, the surety has no interest in taking care that the condition of the recognisance is performed.* Therefore the contract between the plaintiff and defendant is tainted with illegality.
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> [emphasis added]

37 The Prosecution also tendered two other authorities, namely, *Consolidated Exploration and Finance Co v Musgrave* [1900] 1 Ch 37 ("*Consolidated Exploration*") and *Rex v Porter* [1910] 1 KB 369 ("*Porter*"), in support of its submission that an agreement to indemnify a surety for bail liabilities would be contrary to public policy. In *Consolidated Exploration*, the plaintiff company transferred shares to the second defendant, Musgrave, as consideration for the latter's promise to stand as surety for two individuals facing criminal charges. The plaintiff sought the return of the shares while Musgrave claimed that he was entitled to the shares since one of the individuals facing criminal charges had absconded. North J held that the security for bail was illegal and void, reasoning (at 42) that:

> … [I]t is essential that the person giving bail should be interested in looking after and, if necessary, exercising the legal powers he has to prevent the accused from disappearing: this is essential for the protection of the public, and anything that tends to prevent or hinder his so doing is illegal. Why is it not equally illegal for the bail to be indemnified by a third person, it being admittedly illegal to be indemnified by the prisoner? The reason of the illegality is the same in each case. It is said that the public still have in the person who gives indemnity the same security of a person whose interest it is to produce the prisoner. That is not so, for he has not the power of the bail. …

38 A similar conclusion was reached in the English Court of Criminal Appeal case of *Porter*. In that case, Clark agreed to give Brindley and the appellant, Porter, 50*l* each to stand as sureties for him so that they would not be put out of pocket if Clark absconded. Lord Alverstone CJ affirmed the established principle that an agreement to indemnify bail was one which cannot be enforced and elaborated (at 373) that:

> … It has been suggested to us that the more modern view of bail is that it is a mere contract of suretyship, and that an agreement to indemnify bail, therefore, does not involve any illegality. If that were so, as soon as the bail had got his indemnity, he would have no interest whatever in seeing that

> the accused person was forthcoming to take his trial, and it is obvious that criminals, particular if possessed of means, would very frequently abscond from justice. …

39 It is evident from these authorities that it is important to consider the source of funds that are being advanced for bail. This is not merely an administrative detail that can be ignored by the judge considering whether to grant bail. In particular, the court considering the bail application must have regard to the issue of whether the sureties are suitably incentivised to take active steps to ensure that the accused does not flee and that the accused will likely meet and comply with any requirements to attend court and answer the charges because they have put their *own* assets at risk. If a court does not duly consider the source of a surety's funds, it may lead to the invidious situation where an accused person who has the means can effectively purchase his freedom.

40 On the facts at hand, the quantum of bail, namely $150,000, was precisely the amount which the respondent indicated his family in China could raise. This meant that the Singaporean sureties would not be putting their own assets at risk at all as they would have been put in funds for the exact amount of bail from the respondent's family. In these circumstances the pull of bail was evidently missing and the District Judge erred in failing to consider this. I also note in passing that the respondent's contention that the sum of $150,000 was the limit of what his family could afford to post by way of bail did not seem consistent with the evidence that he had earlier a remitted a sum of around $500,000 to his father as noted above at [31].

41 It is an established principle of law emanating from the cases I have referred to above that an agreement to indemnify a surety for bail liabilities would be contrary to public policy. Although the facts before me did not

strictly concern a formal agreement to indemnify the sureties in this case, in my judgment, placing a surety in funds in order to persuade that person to stand as surety was equally, if not even more, objectionable as an agreement to indemnify a surety for bail liabilities. Indeed this was essentially the same situation as had transpired in *Herman* (see [36] above).

42 Mr Wee responded in oral argument that the source of bail monies had only been revealed in the course of proceedings below because he had volunteered it in the interests of transparency. I thought that it was commendable that Mr Wee did volunteer it but it did not change the analysis. As a matter of fact, that information was volunteered in the context of an application that was made to amend a part of the relevant court form where the sureties had been obliged to state that the bail money was their own. But, as I have noted above, the requirement was there for good reason. If this requirement was dispensed with, then the pull of bail would be negated and the very premise and foundation on which bail was granted, namely the assurance that the accused would present himself to the court when required, would be lost.

43 In these circumstances, I considered that it was appropriate for me to intervene. The misapplication of the burden of proof as well as the grant of bail without appreciating that the pull of bail was absent would have resulted in the release of the respondent on bail to sureties who would have had no incentive to ensure that the respondent complied with the bail conditions. Further, the respondent could in effect have paid for his freedom through the provision of funds which came in the first instance from his parents, but which in turn could possibly have come from the respondent himself (see the two transfers I have referred to at [31] above). In my judgment, these errors resulted in the possibility of grave and serious injustice, which met the

threshold for the invocation of the court's powers of revision. In all the circumstances, including the fact that the respondent faced a number of charges disclosing offences that were by no means trifling in nature, there was a significant flight risk. The question then was whether to direct that the order granting bail be revoked altogether or whether the quantum of bail should be increased.

The appropriate order

44 The following non-exhaustive considerations may be taken into account by a court which has to determine whether to grant bail (see *Public Prosecutor v Wee Swee Siang* [1948] MLJ 114):

(a) Whether there are reasonable grounds for believing the accused is guilty of the offence;

(b) The nature and gravity of the offence charged;

(c) The severity and degree of punishment that might follow;

(d) The danger of the accused absconding if released on bail;

(e) The accused's character, means and standing;

(f) The danger of the offence being continued or repeated;

(g) The danger of witnesses being tampered with;

(h) Whether the grant of bail is essential to ensure that the accused has an adequate opportunity to prepare his defence; and

(i) The length of the period of detention of the accused and the probability of any further period of delay.

I pause to note that some of these considerations overlap with the considerations relevant in the context of a bail application pending appeal (see *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649 at [29]).

45 In my judgment, the appropriate course in the entire context of this case was to direct that the order granting bail be revoked. The relevant circumstances on the facts of this case included the following:

(a) The offences committed by the respondent under s 477A of the Penal Code were non-bailable (see [29] above).

(b) The respondent had few if any roots in Singapore and his family members were not within the jurisdiction.

(c) The respondent was less than candid in relation to the transfer of $500,000 out of his bank account in the proceedings below (see [31] above).

(d) In the absence of explanation or evidence to the contrary, it appeared that the respondent would have the means to live comfortably if he did abscond.

(e) There was evidence that the respondent, despite the existence of Mareva injunctions issued against him in other proceedings, had been able to meet other expenses. This suggested that the respondent had other sources of funds. According to the first affidavit of the investigating officer, when the respondent was asked where he had obtained the monies for his expenses, he replied that he had borrowed from his relatives but was unwilling to disclose any more information.

(f) According to the first affidavit of the investigating officer, the respondent admitted that he had created fictitious receipts to show that payments had been made to his company, Young Music & Dance Studio Pte Ltd. This admission pointed towards the respondent's deceptiveness which was relevant in assessing the likelihood of his absconding.

(g) Mr Wee suggested at the hearing before me that the respondent if convicted of the s 477A charges might face a sentence of a "few months to a few years of imprisonment". It was therefore clear that these were charges that were not inconsequential in nature.

(h) The hearing before me was fixed on an urgent basis and the respondent had only been in remand for a relatively short period of about ten days when the present application was heard. In addition, the Prosecution indicated that it intended to abide by the direction of the State Courts to complete its work so that the matter could proceed on 4 December 2014. Therefore, there was in my view little risk of the respondent being kept in remand for an unreasonable period of time.

46 In all these circumstances, I did not consider it realistic to set bail at a level and on terms that would ensure that the respondent would not flee and that would also ensure that the sureties would be putting their own assets at risk. I therefore granted the application and directed that the order granting bail made below by the District Judge be revoked.

Conclusion

47 I conclude with one final observation. My order in the present case does not on any basis suggest that a foreign accused person without roots in

Singapore must be denied bail. The decision whether to grant bail is one that is made by reference to the particular facts of each case. In my judgment, in the circumstances presented in this case, it was not appropriate at this time to grant bail to the respondent.

Sundaresh Menon
Chief Justice

Tan Ken Hwee, Ang Feng Qian, Nicholas Tan, Norman Yew and Kenneth Chin (Attorney-General's Chambers) for the applicant;
Wee Pan Lee (Wee, Tay & Lim LLP) for the respondent.