Christanto Radius *v* Public Prosecutor
[2012] SGHC 114

Case Number : Criminal Motion No 31 of 2012

Decision Date : 24 May 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Quek Mong Hua and Julian Tay (Lee & Lee), and Hamidul Haq and Istyana Ibrahim (Rajah & Tann LLP) for the applicant; Kow Keng Siong and Diane Tan (Attorney-General's Chambers) for the respondent.

Parties : Christanto Radius — Public Prosecutor

Criminal Procedure and sentencing – Extradition

Bail

24 May 2012 Judgment reserved.

Choo Han Teck J:

1 Mr Radius Christanto ("Mr Christanto") is in remand at Changi Prison pursuant to a warrant for apprehension made on 3 May 2012, upon a request made by the Australian authorities on 27 April 2012 under the Extradition Act (Cap 103, 2000 Rev Ed) ("Extradition Act 2000"). Mr Christanto's application for bail before the learned District Judge ("DJ") was denied on 4 May 2012. He therefore filed this criminal motion petitioning the High Court under s 97 of the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC 2010") for bail pending the hearing for committal under s 28(7) of the Extradition Act 2000. On his application on 17 May 2012, I directed that Mr Christanto be transferred to Changi Hospital as an interim measure pending determination of the present criminal motion. Mr Christanto is wanted by the Commonwealth of Australia to stand trial for two charges pertaining to an alleged conspiracy to bribe a foreign public official under ss 11.5(1) read with 70.2(1) of the Australian Criminal Code Act 1995 (No 12 of 1995) ("Australian Criminal Code"). The charges are as follows:

> First charge
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> Between 17 December 1999 and on or about 6 June 2000 at Melbourne and diverse other places, Securency International Pty Ltd together with Radius Christanto, Myles Curtis, Mitchell Anderson, Hugh Brown and diverse others conspired to provide a benefit to another person, such benefit being not legitimately due to the other person, with the intention of influencing a foreign public official in the exercise of the official's duties as a foreign public official in order to obtain or retain business.
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> Second charge
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> Between 17 December 1999 and on or about 2 February 2001 at Melbourne and diverse other places, Securency International Pty Ltd and Note Printing Australia Limited together with Radius Christanto, Myles Curtis, Mitchell Anderson, John Leckenby, Peter Hutchinson and diverse others conspired to provide a benefit to another person, such benefit being not legitimately due to the

other person, with the intention of influencing a foreign public official in the exercise of the official's duties as a foreign public official in order to obtain or retain business.

For completeness, I set out ss 11.5(1) and 70.2(1) of the Australian Criminal Code in full as follows:

11.5 Conspiracy

(1) A person who conspires with another person to commit an offence punishable by imprisonment for more than 12 months, or by a fine of 200 penalty units or more, is guilty of the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

70.2 Bribing a foreign public official

(1) A person is guilty of an offence if:

(a) the person:

(i) provides a benefit to another person; or

(ii) causes a benefit to be provided to another person; or

(iii) offers to provide, or promises to provide, a benefit to another person; or

(iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and

(b) the benefit is not legitimately due to the other person; and

(c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:

(i) obtain or retain business; or

(ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

(1A) In a prosecution for an offence under subsection (1), it is not necessary to prove that business, or a business advantage, was actually obtained or retained.

Benefit that is not legitimately due

(2) For the purposes of this section, in working out if a benefit is ***not legitimately due*** to a person in a particular situation, disregard the following:

(a) the fact that the benefit may be, or be perceived to be, customary, necessary or required in the situation;

(b) the value of the benefit;

(c) any official tolerance of the benefit.

Business advantage that is not legitimately due

(3) For the purposes of this section, in working out if a business advantage is ***not legitimately due*** to a person in a particular situation, disregard the following:

(a) the fact that the business advantage may be customary, or perceived to be customary, in the situation;

(b) the value of the business advantage;

(c) any official tolerance of the business advantage.

Penalty for individual

(4) An offence against subsection (1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

[emphasis in original]

2 Mr Christanto was first contacted by the Corruption Prevention Investigation Bureau ("CPIB") on 16 March 2012 after which he was required to attend three times at the CPIB (*ie* 16 March 2012, 19 March 2012 and 4 May 2012) which he did. He was initially required to post bail of $10,000 on 16 March 2012 and on the second occasion on 19 March 2012, was required to provide two sureties and the bail amount was increased to $200,000 ($100,000 per surety). Mr Christanto complied with his bail conditions until he was arrested and the warrant for apprehension was issued. The Prosecution oppose Mr Christanto's criminal motion before the High Court on the following grounds:

(a) Bail is not available under s 95(1)(c) of CPC 2010 for fugitives who have been arrested under a warrant of apprehension issued under s 24(1) of the Extradition Act 2000; and

(b) Parliament has unequivocally spoken through s 95(1)(c) of CPC 2010 to deny bail to fugitives as the alternative may amount to a breach of Singapore's obligations and may give a fugitive a further opportunity to flee from the reach of the requesting country.

The following questions thus arise in this application:

(c) Whether the Magistrate/DJ had the power to grant bail to fugitives facing extradition proceedings under either the Extradition Act 2000 or CPC 2010;

(d) If not, whether the High Court had the power to grant bail to fugitives facing extradition proceedings either under s 97 of CPC 2010 or in exercise of its inherent jurisdiction, if any; and

(e) In the event that the High Court has the power to grant bail in extradition proceedings, what considerations are operative and what bail conditions should be imposed on the fugitive.

3 I turn now to the first question of the Magistrate's power to grant bail in extradition proceedings. In order to understand the provisions governing the grant of bail in extradition proceedings, it is important to refer to the key Acts and their respective predecessors. The first is the Extradition Act 1870 (33 & 34 Vict c 52) (UK). It was later consolidated as the Extradition Acts,

1870 to 1935, henceforth termed "Extradition Act 1870" for convenience, which was passed in England as a comprehensive Act on extradition proceedings. Before the Extradition Act 1870 came into force, the law (apart from the common law) on extradition in England was in three treaties with France, US and Denmark. The three separate Acts which gave effect to the three treaties were repealed (see Sir Francis Piggott in *Extradition: A Treatise on the Law relating to Fugitive Offenders* (Kelly & Walsh Limited, 1910) ("Piggott") at pp 29–30). Orders in Council were put in place to give effect to England's extradition treaties, and the Orders in Council extended the application of the Extradition Act 1870 to the British colonies under s 17 of Extradition Act 1870 (Piggott at pp 37 and 177). Shortly thereafter, the Fugitive Offenders Act 1881 (44 & 45 Vict c 69) (UK) ("Fugitive Offenders Act 1881") was enacted. Piggott explains the difference between the two Acts at p 189:

> The object of the [Fugitive Offenders Act 1881] ... is to apply the principles of extradition to the [British Empire]. It differs from the Extradition Act [1870] in this important particular, that it applies to a much larger area of crime – to all offences punishable "either on indictment or information, by imprisonment with hard labour for a term of 12 months or more, or by any granter punishment." It applies to all persons, subjects and aliens, who have committed offences in one part of the Empire and escaped to another part [of the Empire]. But its limitations are obvious; directly the fugitive has got beyond the dominions, it is powerless, and both subject and alien come under the Extradition Act [1870] with its limitations. This may be illustrated by the following example – If a Frenchman from Reunion were to commit an offence ... in Mauritius, and escape to Australia, he could be sent back to Mauritius under the Fugitive Offenders Act; but if he had escaped to New Caledonia he could only be dealt with under the Extradition Act ... and he is not liable to surrender if his offence is not within the treaty with France.

The Fugitive Offenders Act 1881 was intended for the extradition of fugitives who had committed offences in and then had escaped to different parts of the British empire whereas the Extradition Act 1870's jurisdiction and operation depended, in all cases, on treaties with foreign countries. In so far as bail was concerned, under s 5 of the Fugitive Offenders Act 1881, the Magistrate was expressly given powers to order bail for fugitives before him/her:

> A fugitive when apprehended shall be brought before a Magistrate, who (subject to the provisions of this Act) shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be (including the power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction.

Section 9 of the Extradition Act 1870 also had a similar provision relating to the powers of the Magistrate, but the question as to whether this provision expressly conferred on the Magistrate powers to grant bail, was a problematic one. Section 9 of the Extradition Act 1870 stated as follows:

> Hearing of case and evidence of political character of crime –
>
> When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

A question may arise as to why s 5 of the Fugitive Offenders Act 1881 expressly provided for the Magistrate's power to grant bail while no express mention of the same appeared in the Extradition Act 1870. Piggott (at p 94) discusses this apparent omission, concluding that the silence of the Extradition Act 1870, if it were to be given any significance at all, is inconclusive on the question of the existence of the Magistrate's power to grant bail. He states:

> The powers given to the magistrate under [s 9 of the Extradition Act 1870] include the power to remand from time to time... But whether they also include the right to admit the prisoner to bail is a difficult question not yet authoritatively decided. A difference in the drafting of the corresponding section of Fugitive Offenders Act, 1881, s. 5, may be at once noticed. There the same language is used; but after the words "as near as may be," the following parenthesis is added – "(including the power to remand and admit to bail)." No reliable argument can be made on this difference between the two Acts; for while it may be said, on the one hand, that the express reference to bail in the Act of 1881 shows that it was deliberately excluded from the Act of 1870, it may also be argued that it was put into the later Act in order to prevent the same point arising as had arisen under the earlier Act, and therefore does not clear up the doubt under that Act.

I am in full agreement with this view.

4 Upon independence, our own legislative history began with the Extradition Bill (Bill 16 of 1968) which was passed as the Extradition Act 1968 (Act 14 of 1968) ("Extradition Act 1968"). In the explanatory statement to the Extradition Act 1968, the following was said:

> The Bill provides for the repeal of the United Kingdom Extradition Acts, 1870 to 1935, and the Fugitive Offenders Act, 1881, in so far as they apply to and operate as part of the law of Singapore ...

Our Extradition Act 1968 patterned legislation enacted and in force in Australia (then), namely the Extradition (Commonwealth Countries) Act 1966 (No 75 of 1966) (Cth) and the Extradition (Foreign States) Act 1996 (No 76 of 1966) (Cth) (collectively, "the 1966 Acts" (see: Explanatory Statement to the Extradition Bill, Bill 16 of 1968)) which essentially consolidated the relevant provisions of the Extradition Act 1870 and Fugitive Offenders Act 1881, retaining the distinction between extradition to and from foreign states and within the Commonwealth of Nations. Singapore's legislative provisions with respect to the grant or management of bail whether under the Extradition Act 2000 currently in force or in the 1968 version of the Act have remained largely unchanged. After the repeal of s 9 of the Extradition Act 1870 and s 5 of the Fugitive Offenders Act 1881, no provision of similar power or scope relating to the Magistrate's power to grant bail in extradition proceedings has been incorporated in any statutory provision. As Piggott argues, the Extradition Act 2000's silence cannot be taken to be conclusive of Parliament's intention to oust all courts of their jurisdiction to grant bail in extradition proceedings. Taking such a position would create confusion in respect of some of the provisions such as ss 11(2) or 25(2) of the Extradition Act 2000. These provisions have clear references to bail being granted when they provide, for example, that a Magistrate may remand "a person brought before him under this section, either in custody or on bail". The following sections evidence further instances of such references to fugitives facing extradition proceedings while being on bail: s 10(5)(b) and s 11(6)(b) in relation to Foreign States; s 21(2), s 24(5)(b), s 25(2) and s 25(6)(b) in relation to Commonwealth States; and s 35(2), s 35(5)(b) and s 37(1)(b) in relation to Malaysia. The sheer number of sections in the Extradition Act 2000 which clearly assume that the individual facing extradition may be on bail, begs the question of how, under what provision and by whom the fugitive might have been granted bail to begin with. If Parliament's failure to include an equivalent of s 5 or s 9 of the Fugitive Offenders Act 1881 or Extradition Act 1870 respectively was to be taken as conclusive evidence that fugitives shall not be granted bail, what then is the court to make of the provisions in the Extradition Act 2000 which conceive of such individuals being on bail? The absence of an express provision conferring such a power to grant bail on the Magistrate cannot logically be the end of this enquiry. The only reasonable conclusion must be that the availability of bail is assumed by Parliament. The silence of the Extradition Act 2000 should be addressed by applying the general bail provisions contained in the CPC 2010 or the Criminal Procedure Code

(Cap 68, 1985 Rev Ed) ("the old CPC") (particularly, ss 351 and 352), depending on the time when extradition proceedings were commenced. While the old CPC provisions make no specific mention of extradition proceedings, s 95(1)(c) of CPC 2010 specifically states that bail shall not be granted in extradition proceedings. Thus it appears that reading the Extradition Act 2000 with s 95(1)(c) of CPC 2010, the Magistrate does not possess the power to grant bail in extradition proceedings. However, even though the Magistrate is not empowered to grant bail in extradition proceedings, the High Court is vested with this power either under s 97 of CPC 2010 or by invoking its inherent jurisdiction in pursuance of the same.

5 A question posed by the present application is whether the High Court may grant bail in extradition cases under either s 95 or s 97 of CPC 2010. There is some uncertainty concerning the nature of the power that allows a higher court to "alter" bail orders of the Magistrate, especially in cases, similar to the present, where the Magistrate refuses bail. Even in jurisdictions such as the US, Australia and Malaysia which have recognised that there is some recourse to a higher court against a Magistrate's refusal to grant bail, there are divergent views as to whether these applications are brought by way of review or appeal. Tan Yock Lin and S Chandra Mohan in *Criminal Procedure in Singapore and Malaysia* (LexisNexis, Looseleaf Ed, 2012) ("Tan and Mohan") note in relation to the Singapore position (at paras 1404 – 1450 and 1452) that:

> ...[T]he nature of bail is such that a bail decision can in no way be envisaged as a final disposition. Being interlocutory in nature, if appeals were possible, the main trial would become involved in questions which are entirely preliminary in nature. And therefore, even the trial court may consider a fresh application at any time, though an earlier bail application has been refused. If an application for bail may be renewed before the trial court, *a fortiori* a fresh application may be made to the High Court by way of review. ...
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> [...]
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> In Singapore, there is no appeal from a refusal of bail. Firstly, the [Criminal Procedure] Code has no provision expressly conferring a right of appeal. Secondly, a bail decision is merely interlocutory and does not finally dispose of the rights of the accused. Thirdly, it is not a judgment or order of any finality.

6 I agree with the view thus expressed. This is different from the position in Malaysia where "an appeal [to a higher court] from a bail order or refusal of bail of an inferior court" is available under s 394 of the Criminal Procedure Code (Act 593, 1999 Rev Ed) ("Malaysian CPC") (Tan and Mohan at paras 1454–1500). Thus, as the DJ's decision to refuse the grant of bail is not appealable, the High Court's power to consider Mr Christanto's criminal motion under s 97 of CPC 2010 operates as a statutory power of review. The alternative justification is that this power arises from the inherent jurisdiction and power of the High Court to grant bail in extradition proceedings, and this justification has been relied upon by courts in other jurisdictions (see below at [12] to [16]).

7 Section 95 of CPC 2010 provides as follows:

> **Exceptions to bail or release on personal bond**
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> 95. —(1) An accused shall not be released on bail or on personal bond if —
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> (*a*) he is charged for an offence punishable with death or imprisonment for life;
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> (*b*) having been previously released on bail or personal bond in any criminal proceedings, he

had not surrendered to custody or made himself available for investigations or attended court, and the court believes that in view of this failure, he would not surrender to custody, or make himself available for investigations or attend court if released; or

(*c*) he has been arrested or taken into custody under a warrant issued under section 10, 24 or 34 of the Extradition Act (Cap. 103) or endorsed under section 33 of that Act.

(2) Notwithstanding subsection (1), the court may —

(*a*) direct that any juvenile or any sick or infirm person accused of such an offence be released on bail; or

(*b*) release on bail an accused charged with an offence referred to in subsection (1)(*a*), if —

(i) the offence is also punishable with an alternative punishment other than death or life imprisonment; and

(ii) the offence is to be tried before a District Court or a Magistrate's Court.

(3) In this section, "accused" includes a "fugitive" as defined in the Extradition Act.

It is plain and clear under s 95(1)(c) of CPC 2010 that a fugitive apprehended pursuant to ss 10, 24 or 34 of the Extradition Act 2000 "shall not be released on bail or personal bond". However, s 97 of CPC 2010 specifically relates to the High Court's powers in respect of bail:

High Court's powers to grant or vary bail

97. —(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 Subordinate Court, and impose such other conditions for the bail or personal bond as it thinks fit.

(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.

How s 95(1)'s restrictions relate to the High Court's powers in s 97 of CPC 2010, was discussed in this Court's decision in *Mohamed Hisham bin Sapandi v Public Prosecutor* [2011] 4 SLR 868 ("*Hisham*"). It was there held that the High Court's discretion in s 97 is unfettered by s 95(1) CPC 2010 which solely applies to the Subordinate Courts. The Prosecution has sought to limit *Hisham*'s reasoning to the first limb of s 95(1)(a). Although the court in *Hisham* was dealing with s 95(1)(a) (which relates to bail for "offences punishable with imprisonment for a term of 20 years or more"), the reasoning behind reading s 97 as the governing provision, unfettered by s 95(1) of CPC 2010 applies to every limb under s 95(1), including s 95(1)(c) pertaining to the grant of bail extradition proceedings. In fact, *Hisham* stands for the wider proposition that to interpret s 97 as subject to any of s 95(1)'s restrictions would be incorrect as it would be contrary to Parliament's intention and would render the High Court's jurisdiction under s 97 of CPC 2010 nugatory.

8 It must also be noted that if s 95(1)(a)-(c) of CPC 2010 is read to limit s 97 of CPC 2010, in the context of extradition proceedings, once a warrant of apprehension is issued, prior to a full committal hearing, "bail would be totally prohibited" and the "discretion of any court totally ousted"

(see *Hisham* at [9]). This Court found that such a reading was unreasonable, notwithstanding the specific limb of s 95(1) in issue, as "such a drastic change in the law will require clear and express Parliamentary language". It should also be highlighted that on 18 January 2012, in response to a question posed by MP Sylvia Lim, the Minister for Law, Mr Shanmugam ("the Minister"), confirmed that if a case relating to the High Court's jurisdiction to grant bail arose again, that Parliament would amend the law to be in line with *Hisham*. The Minister did not qualify his statement in relation to bail for extradition proceedings. While it was argued by the Prosecution that the Minister's statement was to be limited to s 95(1)(a) of CPC 2010, the language chosen by the Minister in the relevant Parliamentary debates were explicitly different. The Minister in fact clearly discussed s 95(1) rather than s 95(1)(a) of CPC 2010 (see *Singapore Parliamentary Debates*, *Official Report* (18 January 2012) vol 88 at col 64). He said:

> As regards the two points made by the hon. Member, Ms Sylvia Lim, I think the question on bail and sections 95, 97, is a valid one. It was considered recently last year in Hisham's case. The High Court held that its power to grant or vary bail under section 97(1), would be redundant if it were qualified by other provisions, specifically section 95(1). And I think the statement is very clear, it was directly on point in contrast to the earlier case which I think was decided in 2005. And our view is that the statutory language is clear, the judgement is clear, and the latest decision sets out the law. Nevertheless, I thank the Member for raising it, allowing me to clarify that the discretion is unfettered, and if the issue arises again, we will certainly amend, to put that beyond doubt.

While the Minister's statement admittedly arose in the context of the Second Reading of the Statutes (Miscellaneous Amendments) Bill (Bill 22 of 2011) which proposed amendments to s 95(1)(a) of CPC 2010 only, his views clearly constituted unequivocal Parliamentary approval of *Hisham*'s interpretation of its intention behind drafting s 97 in addition to or as overriding s 95(1) of CPC 2010. While it is clear that s 97 is not fettered by s 95(1) of CPC 2010, how does one explain why s 97, relating to bail for "accused" persons does not have a provision similar to s 95(3) which specifically includes "fugitives" within the definition of "accused" for s 95's purposes? First, the simple answer is that s 97 of CPC 2010 is a general governing provision intended to grant the High Court discretionary jurisdiction to grant bail where an individual is arrested, particularly in the light of the Extradition Act 2000's silence on the matter. Accordingly, "any accused" under s 97 must reasonably and necessarily be interpreted to include "fugitives". Applying the reasoning in *Hisham*, absent clear Parliamentary language as seen in s 95(1)(c) removing "fugitives" from the scope of the High Court's jurisdiction, the High Court's power is "unfettered".

9 Second, under the procedure in ss 9-10 or 23-24 of the Extradition Act 2000, once a notice is issued by the Minister for the surrender of the fugitive, a warrant of apprehension can be issued by the Magistrate. Under ss 11(1) or 25(1) of the Extradition Act 2000, after having been apprehended, the individual shall be brought "as soon as practicable before a Magistrate" for his committal hearing whereupon the requesting state, through the Public Prosecutor, must establish their case to warrant the committal of the fugitive. To interpret s 97 as excluding "fugitives" would result in the drastic consequence of individuals apprehended under the Extradition Act 2000 being denied the opportunity to apply for bail to any court until their committal hearing which does not, by statute, have to be convened by any specific number of days from apprehension. This interpretation would be a serious denial of the established principle of "innocent until proven guilty". When a person has been charged for a crime but not yet convicted, bail is one of the strongest and sincerest tribute to the presumption of innocence. It is true that persons on bail may jump bail. When such a person does so it is usually because he knows that he is guilty or he does not trust the justice system. Adherence to the presumption of innocence therefore encourages the innocent to have confidence in the justice system, and maintain his/her liberty and right to be heard which the statutory provisions reviewed

above seek to preserve.

10 Third the Australian authorities also lend weight to reading "fugitives" as a sub-set of accused persons as the position has been taken, and rightly so, that extradition proceedings are simply a form of criminal proceedings. This approach must be correct as the CPC 2010 is agreed by both parties in this criminal motion to be the statute exhaustively governing all procedural matters in relation to the Extradition Act 2000. In the Federal Court of Perth's decision of *Hempel and another v Moore* (1987) 70 ALR 714, the applicant sought an order of review under the Administrative Decisions (Judicial Review) Act 1977 (No 59 of 1977) (Cth), against the Magistrate's refusal of bail after committing him to await surrender to the requesting jurisdiction. One of the issues before the Federal Court of Perth was that O 53 r 35 of the Federal Court Rules in Australia (providing for bail pending appeals in criminal proceedings) was based on s 59(2) of the Federal Court of Australia Act 1976 (No 156 of 1976) which only allowed the court to make rules for "convicted persons". It was argued that "convicted persons" did not include persons subject to extradition proceedings. The Federal Court rejected this argument, relying on the English cases of *Amand v Home Secretary* [1943] AC 147 at 156 and *Zacharia v Republic of Cyprus* [1963] AC 634 at 657 for the proposition that extradition proceedings can be characterised as criminal proceedings, and no distinction should be drawn between "convicted" and "unconvicted" persons. The court was willing to overlook the specific technical significance of the term "conviction" when dealing with an individual facing committal in the course of extradition proceedings. Applying the same reasoning, the term "fugitive" should be read as a subset of "any accused" under s 97 of CPC 2010 on the basis that extradition proceedings are simply a form of criminal proceedings to which all provision the CPC 2010, where consistent with the Extradition Act 2000, must necessarily apply.

11 Fourth, the relevant statutory provisions relating to bail in extradition proceedings support the interpretation of s 97 of CPC 2010 to include fugitives. First, s 418 of CPC 2010 expressly confers the power on the High Court to grant bail in cases where an order for review of detention is sought. This would be after the fugitive has been committed before a Magistrate and has made an application for review of his detention under s 417 of CPC 2010. For completeness ss 417 and 418 of CPC 2010 state as follows:

> **Application for order for review of detention**
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> 417. —(1) Any person —
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> (*a*) who is detained in any prison within the limits of Singapore on a warrant of extradition under any law for the time being in force in Singapore relating to the extradition of fugitive offenders;
>
> (*b*) who is alleged to be illegally or improperly detained in public or private custody within those limits; or
>
> (*c*) who claims to be brought before the court to be dealt with according to law, may apply to the High Court for an order for review of detention.
>
> (2) On an application by a person detained on a warrant of extradition, the High Court shall call upon the Public Prosecutor, the committing Magistrate and the foreign Government to show cause why the order for review of detention should not be made.
>
> (3) Notice of the application together with copies of all the evidence used on the application shall be served on the Public Prosecutor.

Orders for review of detention

418. The High Court may, whenever it thinks fit, order that a prisoner detained in any prison within the limits of Singapore shall be —

(*a*) admitted to bail;

(*b*) brought before a court martial; or

(*c*) removed from one custody to another for the purpose of trial or for any other purpose which the Court thinks proper.

If s 97 CPC 2010 is interpreted as excluding "fugitives", it would lead to the curious result that the High Court would have the power to grant bail to a person subject to a warrant of committal pending review of his detention but not to an individual who was merely apprehended pending his committal hearing. That person would be left without any opportunity to apply to bail either before the Subordinate Court or High Court. In addition to ss 417 and 418 of CPC 2010, as noted above, to interpret s 97 as excluding "fugitives" would result in a number of provisions of the Extradition Act 2000 (above at [4]) which conceive of fugitives on bail, incomprehensible. Accordingly, a reading of the relevant provisions that avoids absurd consequences requires the inclusion of "fugitives" within the scope of the High Court's jurisdiction under s 97 of CPC 2010. As a matter of comparative jurisdictional analysis, the interpretation of s 97 of CPC 2010 that confers on the High Court the power to grant bail in extradition proceedings is a position in the company of one of two approaches taken by Commonwealth jurisdictions. By way of example, England, Malaysia and Australia have taken a statutory approach conferring on the courts an express power to grant to bail in extradition proceedings, while the US and England (prior to certain statutory enactments) have pronounced on the existence of an inherent jurisdiction to grant bail which will be briefly examined. The Hong Kong courts have affirmed that the superior court's power to grant bail is both based on statute and on the court's inherent jurisdiction.

12 The English Bail Act 1976 (c 63) (UK) ("Bail Act") as amended by s 198 of the Extradition Act 2003 (c 41) (UK) ("Extradition Act 2003"), currently in force in England, expressly confers on the courts the power to grant bail to individuals facing extradition by extending the application of bail provisions governing all other domestic criminal proceedings to extradition proceedings. Section 198 of the Extradition Act 2003 introduced the following pertinent changes:

(a) The inclusion of persons whose extradition is sought within the class of persons with a general right to bail under s 4(1) of the Bail Act which states, "[a] person to whom this section applies shall be granted bail". The right to bail does not exist if the individual in question is "alleged to be unlawfully at large after conviction" of the extraditable offence (ss 198(1)–(5), Extradition Act 2003);

(b) If a person has already been granted bail, a court can vary or impose bail conditions or withhold bail if an application is made on behalf of the requesting territory (s 198(6), Extradition Act 2003);

(c) Bail may not be granted to an individual facing extradition if the conduct forming the subject matter of the extradition would if carried out in England and Wales constitute an indictable offence and it appears that the individual was on bail at the date of the offence (s 198(13), Extradition Act 2003);

(d) Bail is not likely to be granted where the individual failed to surrender to custody, committed an offence on bail or is likely to interfere with witnesses; and

(e) Section 200 of the Extradition Act 2003 amends the Bail (Amendment) Act 2003 (c 26) (UK) to give the requesting territory a right to appeal against a judge's decision to grant a person bail in extradition proceedings.

In the Malaysian decision of *Sek Kon Kim v Attorney – General* [1984] 1 MLJ 60 ("*Sek Kon Kim*"), the court observed that s 23 of the Fugitive Criminals Act 1967 expressly stated that the provisions of the Malaysian Criminal Procedure Code (FMS Cap 6, enacted in 1935) ("Malaysian CPC 1935") relating to bail shall apply in the same manner in extradition proceedings as if the extradition crime had been committed in Malaysia. However, in so far as the Extradition Ordinance 1958 (which is similar to Singapore's Extradition Act 1968) in Malaysia was concerned, notwithstanding the lack of a provision similar to s 23, the court nevertheless found that it had "unfettered discretion to grant bail under s 388(i) of the Criminal Procedure Code". Under the current version of the Malaysian CPC, s 388(1) is similar to s 327 of the old CPC. Malaysia has since enacted the Extradition Act 1992 (Act 479) wherein s 44 states as follows:

Provisions in the Criminal Procedure Code when applicable

44. The provisions of the Criminal Procedure Code in relation to matters not covered by this Act shall apply in so far as they are not inconsistent with the provisions of this Act, and in the event of any inconsistence between the Provisions of this Act and the Criminal Procedure Code the provisions of this Act shall prevail.

Presently, similar to the English approach, bail applications in connection with extradition hearings are heard under the Malaysian CPC, and depending on the factors and circumstances of the case, the Malaysian court may grant bail to the fugitive in question.

13 The inherent jurisdiction to grant bail has also been articulated in the leading US Supreme Court decision in *Wright v Henkel* 190 US 40 (1903) ("*Wright v Henkel*"). Fuller CJ held that at pp 41 to 44 that:

Not only is there no statute providing for admission to bail in cases of foreign extradition, but section 5270 of the Revised Statutes is inconsistent with its allowance after committal, for it is there provided that if he finds the evidence sufficient, the commissioner or judge "shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made."

...

The demanding government, when it has done all that the treaty and the law require it to do, is entitled to the delivery of the accused on the issue of the proper warrant, and the other government is under obligation to make the surrender; an obligation which it might be impossible to fulfill if release on bail were permitted. The enforcement of the bond, if forfeited, would hardly meet the international demand; and the regaining of the custody of the accused obviously would be surrounded with serious embarrassment. ...

We are unwilling to hold that the Circuit Courts possess no power in respect of admitting to bail other than as specifically vested by statute, or that, while bail should not ordinarily be granted in cases of foreign extradition, those courts may not in any case, and whatever the special

circumstances, extend that relief. Nor are we called upon to do so as we are clearly of opinion, on this record, that no error was committed in refusing to admit to bail, and that, although the refusal was put on the ground of want of power, the final order ought not to be disturbed.

The "special circumstances test" laid out in *Wright v Henkel* accepts the existence of the court's power to grant bail in extradition proceedings while limiting the actual grant to exceptional circumstances. For present purposes, it is important to note that the existence of this power within the inherent jurisdiction of the court remains good law in the US. In the California Court of Appeal decision in *United States of America v Terence Damien Kirby* 106 F 3d 855 (9th Cir, 1996) ("*Terence Damien Kirby*") (at 858) the court noted that although there was no express statutory provision on the district court's power to grant bail, such a power was based on *Wright v Henkel*. The court also held that while "an explicit statutory grant of authority is not, in every case, a necessary prerequisite for judicial action", it agreed that "there must be some statutory basis for jurisdiction". The court found that this jurisdiction was based on 28 USC § 1291 which provided that courts of appeal "shall have jurisdiction of appeals from all final decisions of the district courts".

14 Prior to the enactment of s 198 of the Extradition Act 2003, similar to the Americans, the English also adopted the inherent jurisdiction approach in characterising the power of the court to grant bail in extradition proceedings. In the Privy Council decision of *Knowles and others v Superintendent of Her Majesty's Prison Fox Hill and others* [2005] UKPC 17 ("*Knowles*"), allowing the appeal, affirming the existence of the jurisdiction of the Supreme Court of Bahamas to grant bail in extradition proceedings (with a similar legislative landscape as Singapore) and the persuasive nature of the reasoning in *R v Spilsbury* [1898] 2 QB 615 ("*R v Spilsbury*") the Lords stated as follows:

> 21 It is clear that the Supreme Court [of Bahamas] had an inherent jurisdiction to grant bail to a person detained which was additional to the specific power to grant bail given to the magistrates up to the time of committal. In *R v Spilsbury* [1898] 2 QB 615 in a appeal by a person arrested under the Fugitive Offenders Act 1881 (44 & 45 Vict c 69) ... having reviewed the provision of the 1881 Act Lord Russell concluded that there was no express or implied withdrawal of the right to bail. He said, at p 622:
>
> > "I have come to the conclusion that the provisions of the statute are consistent with the recognition of the power of this court to admit to bail in such cases as the present. This inherent power to admit to bail is historical, and has long been exercised by the court, and if the legislature had meant to curtail or circumscribe this well-known power, their intention would have been carried out by express enactment".
>
> He continued:
>
> > "But how ought the power to be exercised? Considering the class of cases which are likely to arise under the Fugitive Offenders Act, it is obvious that the power ought to be exercised with extreme care and caution."
>
> [...]
>
> 24 There are differences between the Fugitive Offenders Act 1881 and the Extradition Act of The Bahamas, but in the view of the Board on the basis of *R v Spilsbury*, the Supreme Court had an inherent jurisdiction to grant bail under The Bahamas Extradition Act, the predecessor to which was based on the English Extradition Act 1870 (33 & 34 Vict c 52).

So since 1898, the English courts have strongly resisted the argument that in the absence of a clear

Parliamentary pronouncement, the court did not have the power to grant bail for individuals facing extradition proceedings. English statutory law in the form of s 4 of the Bail Act has now codified this power.

15 The Extradition Act 2000 currently in force in Singapore (and its predecessor, the Extradition Act 1968) is based on the 1966 Acts. It would thus be pertinent to examine how the Australian courts have dealt with extradition cases under the 1966 Acts. Some doubt has been cast on the existence of a statutory basis or the inherent jurisdiction to grant bail or review a Magistrate's refusal to grant bail. The court in *R v Rademeyer* (1985) 59 ALR 141 ("*Rademeyer*") rejected the argument that the State Supreme Courts or Federal Courts in Australia had any inherent power to grant bail in extradition proceedings. Like Mr Christanto, the applicant in *Rademeyer* had been refused bail by the lower court pending the committal hearing. The Sydney Supreme Court in *Rademeyer* held that the 1966 Acts covered "the whole field in relation to the surrender of fugitive offenders" in Australia. The court also found that the Bail Act 1978 (No 161 of 1978) (NSW) ("Bail Act 1978") did not apply because a person accused of an extradition crime was not "a person charged" with an offence as required under s 6 of the Bail Act 1978. However, the High Court of Australia subsequently alluded to the existence of its inherent jurisdiction to grant bail in exceptional circumstances, although it found that it did not have to predicate its decision on inherent jurisdiction (*Zoeller v Federal Republic of Germany* (1989) 90 ALR 161 at 163-164). In *United Mexican States v Cabal and others* [2001] 209 CLR 165, the High Court of Australia considered previous decisions which referred to the existence of the inherent jurisdiction to grant bail. The court was considering the availability of bail before special leave to appeal was granted on an application under s 21 of the Extradition Act 1988 (No 4 of 1988) (Cth) (the Act which replaced the 1966 Acts in Australia). It found that the power to grant bail arose from s 73 of the Commonwealth of Australia Constitution Act (The Constitution) rather than any inherent jurisdiction of the court:

> In our view, the power to grant bail in a criminal or extradition case is an incident of the power conferred by s 73 of the Constitution to hear appeals from orders of certain courts. It is not a question of inherent jurisdiction. The grant of judicial power carries with it authority to do all that is necessary to effectuate its main purpose. Because that is so, the Court has authority to do all that is necessary to effectuate the grant of appellate jurisdiction conferred by s 73 of the Constitution. It therefore has power to stay orders that are or may become the subject of its appellate jurisdiction. If the Court did not have power to stay an order the subject of an appeal, it might fail to do full justice to the appellant or potential appellant. ... If there is an application for special leave to appeal or an appeal under s 73 of the Constitution against an order of imprisonment, this Court has jurisdiction to stay that order. It also has jurisdiction to grant bail so as to make the stay order effective.

It is clear that fugitives are not without recourse in Australia even if the courts are slow to grant bail in extradition cases. Academics have further questioned whether the Federal Courts or State Supreme Courts themselves are dispossessed of inherent jurisdiction to grant bail. E P Aughterson in *Extradition: Australian Law and Procedure* (The Law Book Company Limited, 1995) ("Aughterson") noted at pp 197–198:

> ... State Supreme Courts have held that their inherent jurisdiction to grant bail does not extend to cases where a person is held in custody under [the 1966 Acts], unless the court is vested with federal jurisdiction in the matter. It might be questioned whether Supreme Courts should necessarily so confine their powers. If the inherent jurisdiction does so extend, the confinement of the limitation in s 15(3) [which provides that if bail is refused, no other applications may be made "to any other magistrate" under the Extradition Act 1988, as compared to "any other court" in the 1966 Acts] suggests that the Extradition Act [1988] does not "expressly or by necessary

implication" deprive the Supreme Court of that power.

16 The availability of bail for fugitive offenders has also been acknowledged in Hong Kong. In Hong Kong, the current position is that the superior courts have both the statutory and inherent power to grant bail and review bail orders of the committal court. Like Singapore, the Fugitive Offenders Act of 1881 was good law in Hong Kong while it was still a British colony. The UK Fugitive Offenders Act 1967 also extended to Hong Kong by the Fugitive Offenders (Hong Kong) Order 1967 (see: V E Hartley Booth, *British Extradition Law and Procedure (volume II)* (BRILL, 1981) at pp 92–93). The Law Reform Commission of Hong Kong in its report, Bail in Criminal Proceedings [1989] HKLRC 1 at 3.2.6, p 19 ("the report") considered the issue of denying the right to bail to fugitives and the state of the law in Hong Kong at that time. Rejecting the proposition that bail should be denied, the authors of the report remarked as follows:

> We also considered, but rejected, arguments for denying the right to bail to certain categories of persons - such as non-residents, fugitives, deportees, members of the Armed Forces, or persons liable to extradition. Such persons may, it is true, be considered as transient and more likely to abscond. The English Bail Act 1976, by its section 4(2), excludes fugitive offenders. However, we preferred not to deny them the right to bail or a bail decision on the sole ground of belonging to a particular category. Like everyone else they are entitled to have their applications considered on the merits. No doubt their status may be an important factor in deciding whether any of the exceptions is established. We prefer an approach based on the principle that freedom is indivisible and non-discriminatory. We deprecate any approach which discriminates by reference to class or status. Even a fugitive offender is entitled to a determination on bail, for there may be circumstances which make his attendance at court to answer to the charges against him highly probable.

In relation to the position under Fugitive Offenders Ordinance (Cap 503) (HK) ("Cap 503") which is currently in force in Hong Kong Special Administrative Region, the Hong Kong Court of First Instance in *In re Chong Bing Keung, Peter* [1998] HKCFI 351 affirmed that it could review the Magistrate's order to refuse bail under s 9J(1) of the Criminal Procedure Ordinance (Cap 221) (HK) ("Criminal Procedure Ordinance") which states that "[w]here a District Judge or magistrate has refused to admit a person to bail or has so admitted a person subject to any condition, that person may in the case of a refusal, apply to a judge to be admitted to bail or in the case of an admission to bail subject to any condition, apply to a judge to be admitted to bail without bail being subject to that condition". The court held that s 10(5) of Cap 503 "which sets out the requirement for special circumstances has no application to the High Court and only applies to a court of committal". Section 10(5) of Cap 503 provides that "neither the court of committal nor any other court shall remand on bail the person arrested unless it is satisfied that there are special circumstances justifying such remand". When reviewing a Magistrate's decision, "the High Court judge only has to consider ... Part IA of the Criminal Procedure Ordinance" which provides for the right of an accused person or a fugitive offender to be admitted to bail. This is notwithstanding Part IA of the Criminal Procedure Ordinance making no reference to "fugitive", and only referring to "accused persons". The Court of First Instance in the subsequent case of *Hong Kong Special Administrative Region v Robert Henry Cosby* [1999] HKCFI 944 affirmed *R v Spilsbury* and held that as "a superior court of unlimited jurisdiction [it] always has inherent jurisdiction to grant bail". It is clear that while the source of the courts' power to review or grant bail to fugitives varies from one jurisdiction to another, there is a discernible consensus in most jurisdictions on the existence of such a power.

17 Lastly, the inherent jurisdiction of this court in criminal proceedings is recognised in s 5 of CPC 2010:

Saving of powers of Supreme Court and law officers

5. Nothing in this Code shall derogate from the jurisdiction or powers of the Court of Appeal or the High Court or the Judges thereof, or the Attorney-General or the Solicitor-General.

Parliament thus recognised and provided that the inherent jurisdiction of the court was not to be ousted by the operation of CPC 2010. The inherent jurisdiction of the court may be a basis on which bail can be granted or refusal of bail reviewed in cases where s 97 of CPC 2010 does not, on its plain meaning, apply. Suffice to say that while some jurisdictions have a clear statutory framework governing the power to grant bail in extradition proceedings, the remaining countries such as the US, England (pre-statute) and Hong Kong have pronounced the very power to be capable of invoking the court's inherent jurisdiction, albeit in exceptional circumstances. Taking the example of England, even in the face of clear statutory restrictions prohibiting the grant of bail to fugitives (*ie* s 4 Bail Act prior to s 198 of Extradition Act 2003), the courts as far back as 1898 took the view that bail applications could be heard and granted by a court invoking its inherent jurisdiction. While Commonwealth courts have disagreed on the ease of availability and relevant considerations operative on the grant of bail in extradition proceedings, notwithstanding their respective unique statutory landscapes, they are in agreement on the existence of the power to hear such bail applications. It is for Parliament to clearly and unequivocally oust the courts of the power to grant bail in extradition proceedings, short of which s 97 should be interpreted as inclusive of fugitives and as unfettered by s 95(1)(c) of CPC 2010. As eloquently phrased by Lord Russell of Killowen CJ in *R v Spilsbury* at p 620:

> This court has, independently of statute, by the common law, jurisdiction to admit to bail. Therefore the case ought to be looked at in this way: does the Act of Parliament, either expressly or by necessary implication, deprive the court of that power?

It is thus the opinion of this Court that it has the power to grant bail to fugitives facing extradition proceedings either under s 97 of CPC 2010 or by invoking its inherent jurisdiction. The question then arises as to what factors the court should take into account and what if any considerations should be accepted as distinguishing extradition proceedings from domestic criminal proceedings.

18 The US court in *Re Mitchell* 171 F 289 (1909) affirmed *Wright v Henkel* in holding that while the fugitive had a right to bail, bail would be granted "only in the most pressing circumstances, and when the requirements of justice are peremptory". As noted by Roberto Iraola, commenting on the way US courts exercise their inherent jurisdiction in extradition proceedings, in "The Federal Common Law of Bail in International Extradition Proceedings" 17 Ind Int'l & Comp L Rev 29 at pp 29–47, the following factors are examples of "special circumstances": a substantial likelihood of success at the hearing, availability of bail for the underlying charge in the requesting country, the requesting country's allowance of admission to bail for those facing an extradition hearing for the same offense, the likelihood of success in defending against the action in the requesting country, a delayed extradition hearing, a severe health problem, probable lengthy delay as a result of the extradition proceedings itself and appeals therefrom, the age of the extraditee and availability of a suitable detention facility. The presumption against bail in extradition cases and the US court's reluctance to exercise the power save in "exceptional circumstances" was likely founded on the fact that the inherent jurisdiction of the court is by definition discretionary and to be exercised in "exceptional circumstances". A review of the cross-jurisdictional approaches to the grant of bail in extradition proceedings reveals that it is the source of the power that justifies a differentiation of the scope of the court's power *vis-a-vis* extradition proceedings and domestic criminal proceedings. By way of summary, the court in *In the Matter of Extradition of Nacif-Borge* 829 F Supp 1210 (D Nev 1993) at 1214 ("*Nacif-Borge*") noted that bail has "usually" been denied in extradition proceedings. The evolution of the English approach noted in *Knowles* wherein the Lords stated at [26] that "it should only be in exceptional cases that

bail as a matter of discretion is granted" is markedly different from the current approach in England which is now entrenched in statute. With enactment of s 198 of the Extradition Act 2003, while certain considerations specific to extradition have been incorporated into the Bail Act, the scope of the power to grant bail and the individual's right to bail is identical regardless of whether they face domestic criminal prosecution or international extradition. The English experience reveals that where the power to grant bail is statutory, the court's power is broader and consistent with its powers in domestic criminal proceedings.

19 The Singapore courts do not have to invoke their inherent jurisdiction to grant bail in extradition cases since s 97 of the CPC 2010 is a clear statutory basis for the High Court to exercise its power to grant bail in all criminal proceedings. Accordingly, it is my opinion that the uniform approach treating extradition proceedings as a subset of criminal proceedings is preferred. The relevant factors for each crime (whether extraditable or not) will vary depending on the nature of the offence, unique aspects of the factual matrix of the case and the individual in question. As in domestic proceedings, the flight risk posed by the individual can be addressed by the bail conditions imposed rather than eclipsing the availability of bail. The question of whether bail is granted depends on the facts of each case. Furthermore, analyses of the relevant factors on the grant of bail will quickly show that no single unique factor attributable to fugitives stand out requiring a wholly unique, separate or narrower approach to be taken at the very outset when confronted with extradition proceedings. While some factors may be more relevant than others such as the flight risk of the fugitive, this would also be the case when one compares different domestic criminal offences (whether cheating or murder). This distinction is also borne out by the fact that the narrower scope of the power to grant bail is adopted by countries which take the inherent jurisdiction approach such as the US.

20 A review of the case law arising from a range of jurisdictions will show that the courts do not have a consistent response to the question of when bail would be granted in extradition proceedings, and what factors would be regarded by the court as sufficient. This is understandable as the exercise of the power to grant bail is discretionary and fact-sensitive. In *Sek Kon Kim*, the court held that the following non-exhaustive factors would be considered in a bail application for individuals facing extradition:

(1) The nature and gravity of the offence charged.

(2) The severity and degree of punishment which conviction might entail.

(3) The guarantee that the accused person if released on bail would not either abscond or obstruct the prosecution in any way.

(4) The danger of the witness being tampered with and whether the accused person if released on bail is likely to tamper with prosecution evidence.

(5) The opportunity of the accused to prepare the defence.

(6) The character, means and standing of the accused.

(7) The long period of detention of the accused and probability of further period of delay.

21 Given that bail was granted in *Sek Kon Kim*, a summary of the facts may be useful. This case concerned an applicant, a Malaysian, who worked in Australia and who upon return to Malaysia was accused of committing certain offences relating to fraudulent conversion of cheques totalling A$104,646.78. The alleged offences were committed in 1973 and the applicant had returned to

Malaysia soon thereafter. Extradition proceedings were commenced in 1979 and he was arrested in 1983. The Magistrate refused to grant bail to the applicant pending the committal hearing. The court hearing the application from the Magistrate's decision found that given that the underlying offences were not serious in nature, were alleged to have taken place in 1973, and the applicant had vast business dealings in Malaysia and had surrendered his travel documents, bail should be granted to the applicant. The application for bail was allowed at $100,000 with two sureties and the surrender of all his travelling documents.

22 Mr Quek and Mr Haq, counsel for Mr Christanto, emphasised the following considerations of fact which lent weight to his petition for the grant of bail:

(a) Co-operation: He (Mr Christanto) has co-operated with Singapore authorities and attended at least three sessions at the CPIB to assist in their investigations. The Prosecution has stated that "[t]here is clear evidence that until his arrest on 4 May 2012, Mr Christanto did not have the faintest idea that he was wanted by the Australian authorities on very serious charges, and that actions were being taken to have him extradited".

(b) Delay in commencement of extradition proceedings: 12 years have lapsed since the offences identified in the charges were alleged committed and Mr Christanto has not been on notice either actual or constructive of investigations against him.

(c) Low flight risk: He was aware of the facts forming the subject matter of the Australian extradition charges prior to the issuance of the warrant of apprehension and notwithstanding that, he complied with his bail terms from the CPIB.

(d) Substantial roots in Singapore: He has real roots in Singapore since he attended the then Nanyang University in 1973 and Singapore has been his place of residence from around 1989. He successfully applied and received a long term visit pass in 2008 prior to the commencement of any investigations against him. His three children have been "practically raised and educated" in Singapore, completing their primary, secondary and junior college education between 1989 and 2003. His daughter and younger brother also work and reside in Singapore (the Prosecution submitted, in error, at the hearing before the DJ that Mr Christanto had no family in Singapore).

(e) Substantial investments in Singapore: He has substantial investments in Singapore in the form of seven immovable properties worth approximately $25 million of which two apartments (in The Claymore at 27 Claymore Road and The Seaview at 29 Amber Road) have been fully paid for. The remaining five properties are currently being rented out and are at least 40% paid for. He also has cash deposits of about S$15 million in Singapore banks.

(f) Poor health: He is 64 years of age and is in poor health as he suffers from a "myriad of heart ailments". Dr Chua Thiam Eng ("Dr Chua") of Cambridge Clinic stated that in his opinion, Mr Christanto "is definitely sick and unfit for remand" and this opinion was concurred by Dr Hui Kok Pheng ("Dr Hui") of Mount Elizabeth Medical Centre. A letter dated 14 May 2012 from Dr Chua states that Mr Christanto suffers from:

(i) Coronary Artery Disease with an angioplasty done in May 2011;

(ii) Benign prostate hypertrophy pending prostate biopsy;

(iii) Cervical spondylosis with chronic neck ache and pain requiring physiotherapy three times a week;

(iv) Mild chronic inflammation in the right middle lobe of his lung requiring further evaluation; and

(v) Further evaluation was also required for his cardiac and lung conditions and persistent symptoms of chest pain and giddiness.

Finally, Mr Christanto expressed his commitment to abiding by the bail conditions and offered to post a bail sum of S$200,000 to $500,000. His counsels, Mr Quek and Mr Haq also submitted that pursuant to the additional conditions of bail under s 94 of CPC 2010, this Court could order Mr Christanto to report once in the morning to the police and once in the evening, in addition to impounding his passport.

23 Section 95(2) of the CPC 2010 provides for an exception to the general prohibition against the grant of bail by the Subordinate Courts in extradition proceedings, on account of the health of the person to be detained. Section 95(2) provides that "[n]otwithstanding subsection (1), the court may direct that any juvenile or any sick or infirm person accused of such offence be released on bail". This power is available to the High Court under s 97 of the CPC 2010. The discretion to grant bail on account of the potential detainee's illness should not of course be exercised merely because bare allegations of poor health are made by the fugitive. The court has to be satisfied that remanding the person would significantly exacerbate his or her illness, and that this cannot be remedied by changing the conditions of remand, for example, by remanding him or her in a medical institute. I considered Mr Christanto's application under s 97 of the CPC 2010.

24 The factors relevant to a bail hearing in extradition proceedings vary considerably depending on when the application is made (*ie* prior to the fugitive's committal hearing, after the fugitive has been committed or pending the hearing of an order of review of detention under s 418 of CPC 2010). I pause to clarify my earlier decision in *Public Prosecutor v Lim Yong Nam* [2012] SGHC 45 ("*Lim Yong Nam*"). In *Lim Yong Nam*, the fugitive was released on bail of $100,000 pending his committal hearing and after the committal order was issued the Magistrate ordered his bail to be extended in the light of his medical conditions. I therefore accepted the Prosecution's view that the Magistrate had no authority to grant bail once a warrant of committal had been granted under s 11(1) of the Extradition Act 2000. In relation to the Magistrates' power to grant bail in extradition proceedings, having had the benefit of full arguments in the present application, I am now of the view that my decision in *Lim Yong Nam* should be read in light of s 95(1)(c) of CPC 2010, the governing provision on bail applications before the Subordinate Courts. On the question of the High Court's power to grant bail in extradition proceedings, I must emphasise that in the light of my decision in *Hisham* and s 418 of the CPC 2010 which avails the High Court of the power to grant bail to a committed fugitive awaiting extradition, it would be wrong for s 97 of the CPC 2010 to interpreted such that the High Court does not have power to grant bail to a fugitive caught between his/her committal and review hearing. Accordingly, I find that the High Court has the power to grant bail throughout extradition proceedings and to review the DJ's decision to refuse bail under s 97 of CPC 2010, and alternatively, by invoking its inherent jurisdiction. Turning to the facts of this case, I am of the view that as Mr Christanto is awaiting his committal hearing, the fact that he co-operated with the CPIB to the best of his abilities and complied with bail conditions imposed upon him support the grant of his bail at this juncture. I am also satisfied that Mr Christanto has substantial assets in and family ties to Singapore and that the bail conditions imposed on his travel outside of this jurisdiction will sufficiently answer the Prosecution's concerns as to any flight risk which he potentially poses. I pause to note that while it is doubtful that Mr Christanto would have succeeded under s 95(2), in exercise of my discretion under s 97 of the CPC 2010 I also took into account his medical conditions and the undisputed evidence of his doctors as to the effect of remanding him. Having considered the totality of the evidence before me, I order that bail shall be granted to Mr Christanto at $2,000,000 in two sureties with the following

conditions:

(A) ss 94(2)(a)–(d) of CPC 2010 to apply, namely:

(a) to surrender any travel document in his possession;

(b) to surrender to custody or to make himself available for investigations or to attend court at the day, time and place appointed for him to do so;

(c) not to commit any offence while released on bail or on personal bond; and

(d) not to interfere with any witness or otherwise obstruct the course of justice whether in relation to himself or any other person;

(B) he shall report once in the morning at 8.30 am and once in the evening at 6.30pm to the nearest police station or as the police may direct;

(C) he shall not apply for any further travel documents or leave the jurisdiction of Singapore pending extradition proceedings against him; and

(D) his sureties shall not leave the jurisdiction of Singapore without the permission of the High Court or the DJ having conduct of the pending extradition hearings.