Ding Si Yang *v* Public Prosecutor
[2015] SGHC 34

Case Number : Criminal Motion No 58 of 2014

Decision Date : 02 February 2015

Tribunal/Court : High Court

Coram : Chao Hick Tin JA

Counsel Name(s) : Hamidul Haq, Thong Chee Kun, Ho Lifen, Michelle Lee (Rajah & Tann LLP) for the applicant; Tan Ken Hwee, Alan Loh, Asoka Markandu and Grace Lim (Attorney-General's Chambers) for the respondent.

Parties : Ding Si Yang — Public Prosecutor

Criminal Procedure and Sentencing – Bail – Bail pending appeal

2 February 2015

Chao Hick Tin JA:

Introduction

1 This was a motion brought by Ding Si Yang ("the Applicant") praying for bail pending appeal after a similar application had been denied by the District Judge after trial. The Applicant had claimed trial to three charges of corruption and was sentenced to a total of 36 months' imprisonment. On 8 August 2014, I dismissed the Applicant's motion and instead ordered that his appeals against conviction and sentence be heard on an expedited basis.

2 I now set out the grounds for my decision in refusing him bail.

Background facts and decision below

3 On 1 July 2014, the Applicant, a 32 year old Singaporean male, was convicted of three charges of corruption under s 5(*b*)(i) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA").

4 On 24 July 2014, the Applicant was sentenced by District Judge Toh Yung Cheong ("the District Judge") to a term of 18 months' imprisonment for each charge. Two of the charges were ordered to run consecutively, resulting in a total sentence of 36 months' imprisonment.

5 The District Judge's reasons for convicting the Applicant of the charges can be summarised as follows:

(a) The Applicant gave gratification by providing three Lebanese match officials with social escorts who were to render free sexual services to them on request.

(b) There was a corrupt object as the purpose of giving the gratification was to induce the three officials to agree to being involved in match-fixing. This was a transaction which fell within the scope of s 5(*b*)(ii) of the PCA.

(c) There was a corrupt match-fixing element given that the ultimate objective was to get the

three officials to make decisions on the pitch that were incorrect in order to benefit the match-fixers.

(d) There was a corrupt intent as the Applicant had previously written newspaper articles about football and he must have known that match-fixing was illegal.

6 After the sentence of 36 months' imprisonment was imposed, the Applicant immediately applied on the same day for bail pending appeal under s 382 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). The District Judge refused bail, being persuaded by the Prosecution that there was a risk that the Applicant would abscond. In particular, the District Judge cited the following reasons for denying bail:

(a) The Applicant's wife and child lived in Thailand.

(b) Match-fixers who were part of an organised group would have considerable resources to facilitate the Applicant to effect an escape from Singapore. A number of other match-fixers had in fact absconded.

(c) The potential harm to Singapore's reputation, as a country with a low level of corruption and a fair and effective criminal justice system, if the Applicant were to also abscond and avoid punishment for his crimes.

(d) The lack of technological measures such as electronic tagging which could reduce flight risk.

7 Since bail was refused, the Applicant commenced his sentence on 24 July 2014.

The parties' submissions

8 The Applicant submitted that bail pending appeal ought to be granted to him because he had no intention to flee the jurisdiction nor has he shown any propensity to do so. His main arguments can be summarised as follows:

(a) The Applicant has faithfully complied with prior bail conditions, has made no attempt to flee the jurisdiction, and has no intention of doing so.

(b) The Applicant has scheduled an appointment for surgery on his left knee which would take place on 6 August 2014 and which will leave him with limited mobility.

(c) The Applicant has substantial ties with Singapore. He is a Singapore citizen, is very close to his father and sister, and lives in a landed property in Singapore that is registered in his name.

(d) The alleged financial resources available to the Appellant to assist him in absconding were hugely exaggerated.

9 In response, the Respondent argued that:

(a) A second application for bail pending appeal must be accompanied by a material change of circumstances or new facts.

(b) The Applicant has not furnished special reasons why bail pending appeal was appropriate and that the scheduled knee surgery was too much of a coincidence and did not amount to a

special reason.

(c) There was really no way of ensuring that the Applicant would not abscond. The likelihood of the Applicant absconding was high, as he has shown disdain for authority. The bail monies would not be adequate to ensure that the Applicant did not abscond.

(d) The Applicant's appeals against conviction and sentence could be heard expeditiously.

My decision

Principles governing applications for bail pending appeal

10 The starting point in determining whether bail should be granted is to ascertain whether the offence in question is a bailable offence under the 1st Schedule to the CPC. Here, the Applicant was convicted of the offence of corruption which, under s 5 of the PCA, attracted a maximum imprisonment term of five years. Accordingly, the Applicant was convicted of a non-bailable offence (see the 1st Schedule to the CPC). This meant that bail was not available to the Applicant as of right although the court could, in its discretion, decide to offer bail (see *Fatimah bte Kumin Lim v Attorney-General* [2014] 1 SLR 547 at [24]).

11 In the Applicant's first application for bail pending appeal before the District Judge, the usual bail principles were considered and were applied to the factual matrix of this case. This included a consideration of the Applicant's flight risk, his ties with Singapore, the resources available to the Applicant, and whether the security imposed would be sufficient to secure his attendance before the appellate court (see *Public Prosecutor v Ding Si Yang* [2014] SGDC 295 at [128]–[129]; see also *Public Prosecutor v Adith s/o Sarvotham* [2014] 3 SLR 649 ("*Adith*") at [29]). As mentioned above at [6], the District Judge denied this application.

12 The first question which I had to address was what principles this court should apply in a case such as this which was a renewed application for bail pending appeal after an earlier application for the same has been denied.

13 Under some of our older authorities, the courts seemed to have been more inclined towards granting bail unless there were reasons for not granting it (see *Johore v The King, On The Prosecution Of Edith Emily Lurcock* (1907) 11 SSLR 36 and *Rex v Tan Tee* [1948] SLR (46-56) 28). This judicial inclination towards granting bail was noted by A V Winslow J in *Ralph v Public Prosecutor* [1971-1973] SLR(R) 365 ("*Ralph*") at [4] but he did not follow it because it no longer represented the existing judicial attitude in respect of bail applications pending appeal (at [8] and [11]).

14 This shift in judicial attitude was noted by Winslow J in the decision of *Ralph* itself. By 1954, there seemed to be a sea change in the judicial attitude towards granting bail pending appeal. Winslow J cited (at [5]) *Doraisamy v PP* (KL Criminal Application No 2 of 54) (unreported) ("*Doraisamy*"), wherein Wilson J observed that a stay of execution should not be granted unless there were special reasons for doing so. Wilson J's observation was in turn echoed and elaborated upon by Spenser Wilkinson J in Re *Kwan Wah Yip & Anor* [1954] MLJ 146 ("Re *Kwan Wah Yip*") at 148:

> When a Lower Court has refused bail then I agree that the High Court *should not interfere with the discretion of the Lower Court unless there are good reasons for so doing* and as the High Court has not heard the case such reasons must be set out in the affidavit in support of the application for bail. There may be cases in which a Magistrate has made an *error in law that is obvious on the face of the record* and there may also be cases *where it is plain that a*

Magistrate has seriously misinterpreted the facts. Circumstances such as these might be reasons if properly set out in the affidavit which would induce the High Court to grant bail where the Lower Court has refused it.

It seems to me, however, that the granting of bail pending appeal by the Lower Court being a matter of discretion a Magistrate may, apart from the accused's statement that he intends to appeal, find in the circumstances of the case before him reasons which would justify the granting of bail. The considerations which I suggest should guide the Subordinate Courts in granting or refusing bail pending appeal in cases where a term of imprisonment has been imposed are the gravity or otherwise of the offence; the length of the term of imprisonment in comparison with the length of time which is likely to take for the appeal to be heard; whether there are difficult points of law involved; whether the accused is a first offender or has previous convictions; the possibility of his becoming again involved in similar or other offences whilst at liberty; and whether the security imposed will ensure the attendance of the appellant before the appellate Court.

[emphasis added]

I pause to note that Wilkinson J was drawing a clear distinction between the role of the High Court and the lower court in considering bail applications pending appeal. The above principles and observations in *Doraisamy* and Re *Kwan Wah Yip* were cited and applied in the Singapore High Court case of *Ralph* where the bail application was denied because there were, *inter alia*, no new or compelling reasons to grant bail. I note in passing that *Doraisamy* and Re *Kwan Wah Yip* appear to represent the prevailing approach to bail applications pending appeal in Malaysia (see the recent cases of *Sharma Kumari a/p Oam Parkash v Public Prosecutor* [2000] 6 MLJ 847 and *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2004] 1 MLJ 497).

15 The final case that bears mentioning is the Singapore Court of Appeal case of *Mohamed Razip and others v Public Prosecutor* [1987] SLR(R) 525 ("*Mohamed Razip*"). While the case of *Ralph* was not expressly mentioned in the text of the judgment, the Court of Appeal clearly endorsed the position set out in *Ralph*. Specifically, it was observed at [23] that the principle to be applied in a second or subsequent application for bail pending appeal when the initial application has been denied was that "there should be a material change of circumstances or that new facts have since come to light, before such an application [would] be granted".

16 Counsel for the Applicant, Mr Hamidul Haq, argued at the hearing before me that the CPC did not require special reasons for the granting of bail pending appeal. To buttress his point, Mr Haq cited *Adith* at [34] where it was observed that there was no reason why an appellate court should not be approached to consider a stay of execution application when the same application has been denied by the trial court.

17 With respect, Mr Haq's submission is without merit. First, the CPC explicitly confers upon the State Court and High Court the discretion to grant both bail and a stay of execution pending appeal (see, respectively, ss 382 and 383 of the CPC). It is trite that the courts have developed principles and guidelines to decide whether, and when, to exercise this discretion in order to ensure consistency and fairness.

18 Second, the observations in *Adith* must be read in its proper context. In that case, the High Court was considering the specific situation where the Prosecution (a) was appealing against a sentence of, *inter alia*, 36 months' probation and voluntary residence at a facility for 12 months that entailed a loss of liberty; and (b) had sought a stay of execution from the trial court to prevent the

convicted person from commencing his sentence before the appeal as the Prosecution was of the opinion that the appropriate sentence in the case was reformative training. The stay of execution would have ensured that the appellate court's discretion was not curtailed or affected by the convicted person having already served the original sentence in part or in full (see *Adith* at [30]). In those circumstances, the court in *Adith* was not concerned with the principles applicable in an application for bail before the appellate court while an appeal was pending. No such application was brought or was under consideration on the facts of *Adith*. There was therefore no necessity for the court in *Adith* to consider the principles set out above at [14]–[15]. Put simply, the situation here was altogether different from the circumstances faced in *Adith*.

19 To summarise, a second or subsequent application for bail pending appeal should not be granted unless there are special reasons for doing so. These reasons may include:

(a) A material change in circumstances (*Mohamed Razip* at [23]).

(b) New facts that have since come to light (*Mohamed Razip* at [23]).

(c) Serious defects or demerits in the judgment below that would suggest that the chances of succeeding on appeal are so good as to warrant the accused's immediate release from incarceration (*Ralph* at [14]).

(d) An error of law that is obvious on the face of the record has been made or there has been a serious misinterpretation of the facts by the trial court (Re *Kwan Wah Yip* at 148).

Application to the present facts

20 With the above principles in mind, I turn to the facts of the present motion.

21 I first observe that all the relevant circumstances which were raised before me in this motion had also been put before the District Judge, save for the Applicant's knee operation that was scheduled for 6 August 2014. However, I noted that this medical condition was diagnosed 23 months ago on 5 September 2012. During that consultation, the Applicant was advised by Dr Tho Kam San to undergo surgery on his Anterior Cruciate Ligament ("ACL"). A few months later, on 15 January 2013, Dr Tho issued an open-date surgery note to the Applicant but the Applicant did not arrange for the operation to be carried out or consult Dr Tho again.

22 Some 18 months later, on 11 July 2014, which was shortly after the Applicant was convicted of the present corruption charges, he consulted another surgeon, Dr Lim Kay Kiat, regarding his ACL injury. In a subsequent consultation, Dr Lim opined that the ACL surgery was elective and not an emergency.

23 In short, there was no indication that the ACL surgery was a medical emergency that had to be carried out on the Applicant on 6 August 2014. First, there was an 18-month intervening period between his consultations with the two doctors. Second, Dr Lim's medical opinion clearly indicated that the surgery could be done at a later date at the Applicant's option. In any case, I was assured by the Singapore Prison Service that it was fully able, should the need arise, to facilitate the Applicant obtaining the necessary medical procedure (and any subsequent follow-up treatment) at Changi General Hospital. I was therefore unable to regard the Applicant's scheduled knee surgery as a new fact that would justify the granting of bail.

24 I would add that there were no other new facts or material changes in circumstances that

warranted a review of the District Judge's decision to refuse bail.

25 The Applicant was also unable to show that there were serious defects in the judgment below that would suggest that the chances of his succeeding on appeal were so high as to warrant his immediate release from incarceration. Mr Haq in his written submissions listed a number of errors of fact and law that were allegedly sufficient to raise reasonable doubt on the Applicant's conviction. In my judgment, these purported errors were essentially factual in nature and it appeared that at least some of these issues had already been considered by the District Judge in his grounds of decision. I was not persuaded that the Applicant's chances of success on appeal were so high as to warrant his immediate release from incarceration. Nor was I convinced that there was an error of law that was obvious on the face of the record. In saying this, I emphasise that I am not expressing any view on the merits of the Applicant's substantive appeals against his conviction and sentence which, as mentioned at [1] above, would be heard on an expedited basis.

Conclusion

26 For the reasons set out above, I dismissed the motion.

27 I note in postscript that the Applicant's appeals against conviction and sentence were dismissed by the High Court on 19 September 2014 and 16 January 2015 respectively.