Fatimah bte Kumin Lim *v* Attorney-General
[2013] SGHC 232

Case Number : Criminal Motion No 30 of 2013

Decision Date : 06 November 2013

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Thong Chee Kun, Hamidul Haq, Istyana Ibrahim and Wong Shi Yun (Rajah & Tann LLP) for the applicant; Kow Keng Siong and Luke Tan (Attorney-General's Chambers) for the respondent.

Parties : Fatimah bte Kumin Lim — Attorney-General

Criminal procedure and sentencing – Bail

Criminal procedure and sentencing – Extradition

6 November 2013

Woo Bih Li J:

Introduction

1 Ms Fatimah bte Kumin Lim ("the Applicant") was the subject of an extradition request from the United Kingdom ("the UK") on account of alleged offences committed by her under s 1 of the Theft Act 1968 (c 60) (UK) in December 2009. On 3 May 2012, a warrant for the arrest of the Applicant was issued by the Hammersmith Magistrates' Court. Following the extradition request from the UK, a warrant of apprehension was issued under s 24 of the Extradition Act (Cap 103, 2000 Rev Ed) ("the Extradition Act") on 21 May 2013. [note: 1] The Applicant was arrested on the same day. [note: 2] On 29 May 2013 the Applicant filed her application to be released on bail whilst being held in remand at Changi Women's Prison to await her committal hearing.

Background facts

2 The circumstances of the alleged theft were set out in the disposition of Mr Peter Lewis, a Detective Sergeant under the employ of the Metropolitan Police in the UK. The disposition was sworn at the Westminster Magistrates' Court on 11 October 2012 in support of the request for the Applicant's extradition.

3 The Applicant was initially employed by Mariam Aziz, the wealthy ex-wife of the Sultan of Brunei, as a badminton coach in January 2003. She was later appointed as Mariam Aziz's bodyguard and personal assistant. The Applicant was treated as a trusted employee and accompanied Mariam Aziz around the world.

4 In July 2009, the Applicant approached Mariam Aziz's daughter, Afifa Abdullah, to borrow two diamonds for the purpose of convincing two developers with whom she was negotiating a property deal that she was a woman with access to means. The diamonds were gifts from the Sultan of Brunei to Mariam Aziz, and were referred to in the disposition as the 'blue diamond' and the 'yellow diamond'. The 'blue diamond' is a 12.71 carat, pear shaped, flawless, vivid blue diamond purchased for

£2,501,304.00. The 'yellow diamond' is a cut-cornered rectangular fancy vivid diamond weighing 27.10 carats. Both diamonds were kept in a locked cabinet within Mariam Aziz's UK residence.

5 Afifa Abdullah agreed to lend the diamonds to the Applicant. The Applicant is alleged to have then arranged for copies of the diamonds to be made. The original diamonds were subsequently returned to the safe. In early December 2009, the Applicant again asked to borrow the diamonds for the same purpose. The diamonds were handed to the Applicant on 3 December 2009. It is alleged that the Applicant returned the copies to Afifa Abdullah on the same day, and flew to Geneva to sell the originals. The diamonds were purchased by a third party on 23 December 2009 for a sum of US$7,083,972.86.

6 The deception was supposedly uncovered when, in mid-December 2009, Mariam Aziz asked Afifa Abdullah to arrange for the ring containing the 'blue diamond' to be resized. The diamond was checked by staff who advised that it was counterfeit. It was subsequently confirmed that the 'yellow diamond' was also counterfeit. By this time the Applicant had tendered her resignation.

Application for bail

7 The application for bail was made pursuant to s 97(1) of the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC 2010"). I should mention that there is a revised edition published in August 2012 (Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC 2012")) and the application should be construed as having been made under s 97(1) CPC 2012. For present purposes, the material provisions in CPC 2010 and CPC 2012 are substantially the same.

8 Section 95(1)(*c*) CPC 2012 stood in the way of the application for bail. To facilitate an understanding of these two provisions, s 93(1) should be considered together with them. I set out below ss 93(1), 95 in its entirety and 97(1) CPC 2012.

> **When person accused of non-bailable offence may be released on bail**
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> 93.—(1) Subject to section 95(1), if any person accused of any non-bailable offence is arrested or detained without warrant by a police officer, or appears or is brought before a court, he may be released on bail by a police officer of or above the rank of sergeant or by the court.
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> …
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> **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
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> (*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.

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.

…

9 In considering whether bail could be granted to the Applicant, there was an apparent tension between ss 95(1)(*c*) and 97(1) CPC 2012.

The extradition process

10 The legal procedure for extraditing a person to a country declared as a Commonwealth country to which Part IV of the Extradition Act applies is set out under Part IV itself. The UK is such a declared country. First, following s 24(1) of the Extradition Act, a warrant of apprehension is issued by a Magistrate of the Subordinate Courts. The warrant is issued upon authorisation by the Minister via a notice under s 24(1)(*a*) or upon an application supported by such evidence as would justify the issuance of the warrant or the person's apprehension without a warrant (s 24(1)(*b*)). Once the person has been apprehended, s 25(1) mandates that he shall "be brought as soon as practicable before a Magistrate". Section 25(2) provides that:

(2) A Magistrate may remand a person brought before him under this section, either in custody or on bail, for a period or periods not exceeding 7 days at any one time.

11 Thereafter, if the requirements under s 25(7) are satisfied, the Magistrate shall commit that person to prison to await the relevant warrant for his surrender to the Commonwealth country in question.

The threshold question

12 The threshold question was whether the High Court's power to grant bail under s 97(1) is circumscribed by s 95(1)(*c*) CPC 2012 ("the Issue"). Put in another way, does the High Court have unfettered discretion to grant bail in extradition proceedings?

The Applicant's contentions

13 The Applicant submitted that the purpose behind granting bail in domestic criminal cases applies

equally in extradition cases, *ie*, that a person who is subject to extradition proceedings is innocent until proven guilty. [note: 3]

14 The Applicant contended that the High Court has a wide power to grant bail under s 97(1) in any circumstance and this power is not fettered by s 95(1)(*c*). Neither is it fettered by any requirement that there ought to be special or exceptional circumstances before bail is granted to her. [note: 4]

15 The Applicant also contended that if there is a lacuna in the CPC 2012, then the court has the inherent jurisdiction and a wide power to grant bail in the circumstances. [note: 5]

16 The Applicant relied heavily on the decisions of the High Court in *Mohamed Hisham bin Sapandi v Public Prosecutor* [2011] 4 SLR 868 ("*Hisham*") and *Christanto Radius v Public Prosecutor* [2012] 3 SLR 749 ("*Christanto*") and a statement made by Mr K Shanmugam, the Minister of Law ("the Minister") in Parliament on 18 January 2012 on the matter.

The Respondent's contentions

17 The Respondent submitted that the language of s 95(1)(*c*) is clear in prohibiting bail to an accused who is the subject of extradition proceedings and that the High Court's power under s 97(1) applies to domestic criminal cases only and not to extradition proceedings.

18 The Respondent also submitted that if the High Court's power is not circumscribed by s 95(1)(*c*), the High Court should still not grant bail to the Applicant unless there were special circumstances to persuade the court to do so. [note: 6]

19 The Respondent appeared to agree with *Hisham* (which was not a case dealing with extradition proceedings) but to disagree with *Christanto* (which was a case dealing with extradition proceedings) and attempted to confine the Minister's statement in Parliament to the instances set out in s 95(1)(*a*) only.

The court's reasons

20 On 24 July 2013 I dismissed the application for bail and now provide my reasons.

Overview of the authorities

21 The predecessor to CPC 2010 and CPC 2012 is the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC 1985"). The equivalent provisions of CPC 1985 were ss 352(1) and 354(1). I set out the two provisions below.

> **352.**—(1) When any person accused of any non-bailable offence is arrested or detained without a warrant by a police officer or appears or is brought before a court, he may be released on bail by any police officer not below the rank of sergeant or by that court, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life:
>
> Provided that the court may direct that any person under the age of 16 years or any woman or any sick or infirm person accused of such an offence be released on bail.

…

354.—(1) The High Court may, in any case whether there is an appeal on conviction or not, direct that any person shall be admitted to bail or that the bail required by a police officer or Magistrate's Court or District Court shall be reduced or increased.

22 As can be seen, s 352(1) CPC 1985 precluded the granting of bail if there appeared to be reasonable grounds for believing that an arrested or detained person (accused of any non-bailable offence) had been guilty of an offence punishable with death or imprisonment for life unless the proviso to s 352(1) applied.

23 On the other hand, s 354(1) CPC 1985 appeared to suggest that the High Court may grant bail in any circumstance.

24 In *S Selvamsylvester v Public Prosecutor* [2005] 4 SLR(R) 409 ("*Selvam*"), Kan Ting Chiu J had to consider whether bail would be offered for all offences including an offence which came within the exception in s 352(1) CPC 1985, *ie*, an offence punishable with death or imprisonment for life ("the 1985 Exception"). Kan J said at [6] to [10]:

> 6 There is a school of thought that the words "he shall not be so released" do not create an absolute prohibition, and do not apply to the High Court. This arises from reading s 354(1) of the CPC which states that:
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> > The High Court may, in any case whether there is an appeal on conviction or not, direct that any person shall be admitted to bail or that the bail required by a police officer or Magistrate's Court or District Court shall be reduced or increased.
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> 7 In *Re K S Menon* [1946] MLJ 49 , A J Bostock-Hill (President) in dealing with ss 388 and 389 of the Federated Malay States Criminal Procedure Code (the equivalent provisions to our ss 352 and 354(1)), agreed with a submission that a judge of the High Court has complete discretion to grant bail free from the limitations of s 388. He explained at 49:
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> > This has been held by a Full Bench in India to give the High Court absolute discretion in granting bail, free from the limitations of the discretion prescribed by section 388. (see *King Emperor v. Nga San Htwa*, and *King Emperor v. Joglekar*). I respectfully agree with this ruling. Also in the first of the above two cases, Rutledge C.J. says,
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> > > Though the discretion is absolute the High Court must exercise it judicially, and since the Legislature has chosen to entrust the initial stage of dealing with questions of bail to Magistrates and while giving Magistrates an unfettered discretion of granting of bail in all cases except two classes, i.e. cases punishable with death and cases punishable with transportation for life, the High Court ought not to grant bail in such cases except for exceptional and very special reasons.
>
> 8 I have difficulty in following this reasoning. Section 352(1) states that when a person accused of a non-bailable offence appears or is brought before a court, that court may release him on bail. A person facing a charge triable in the High Court will appear in the Subordinate Courts and the High Court. In the usual case, he will be dealt with in the Subordinate Courts until he is committed to stand trial in the High Court, then his case is transferred to the High Court. He may also, as in the case of the applicant, apply to the High Court for bail even before his committal. When the section prescribes that in a case where there are reasonable grounds to

believe that the person is guilty of an offence punishable with death or life imprisonment he shall not be released, that should mean that neither the Subordinate Courts nor the High Court shall release him.

9 If the construction adopted in *Re K S Menon* is applied, the High Court which is prohibited from releasing the person under s 352(1) of the CPC may nevertheless release him under s 354(1). Instead of creating an inconsistency with s 352(1), s 354(1) should be read in harmony with it. Section 354(1) should be read to empower the High Court to grant or vary bail for persons whose cases are still being dealt with by the police officers and the Subordinate Courts. Its purpose is to enable a bail application to be made to a High Court any time after a person has been arrested. This construction allows the two sections to operate in harmony, without over-extending the effect of s 354(1) and placing the High Court beyond the scope of s 352(1).

10 In my view, therefore, all cases fall into three classes where bail is concerned:

(a) for bailable offences, where bail has to be offered;

(b) for most non-bailable offences, where there is a discretion to offer bail; and

(c) for non-bailable offences where there appear reasonable grounds for believing that the accused person has been guilty of an offence punishable with death or imprisonment for life, where no bail may be granted.

25 As can be seen, Kan J did decide that under s 352(1) CPC 1985, no bail was to be offered to a person who came within the 1985 Exception and this prohibition applied to both the Subordinate Courts and the High Court. Nevertheless, he noted, at [20], that the relationship between ss 352(1) and 354 CPC 1985 was not conclusively settled and accordingly he also dealt with the bail application on the assumption that there was discretionary power to grant bail even though the 1985 Exception applied. After taking into account various factors, he refused the bail application.

26 CPC 2010 came into force on 2 January 2011. Unlike CPC 1985, CPC 2010 split the provisions on bail for non-bailable offences and the exceptions thereto into two sections instead of one. Section 93(1) CPC 2010 stipulates the general rule that any person accused of a non-bailable offence may be released on bail whereas s 95(1) CPC 2010 stipulates the exceptions to this general rule.

27 Section 95(1)(*a*) CPC 2010 is the equivalent of the 1985 Exception but it is not identical with the latter as changes were made in s 95(1)(*a*) CPC 2010 which I need not elaborate on.

28 Two new provisions were added as exceptions to the general rule about granting bail. These were s 95(1)(*b*) and (*c*) CPC 2010. Notably, s 95(1)(*c*) CPC 2010 expressly covers extradition proceedings. Furthermore, s 95(3) CPC 2010 defines the reference to the "accused" in the section as including a "fugitive" as defined in the Extradition Act.

29 Section 95(2) CPC 2010 contains exceptions to the exceptions in s 95(1) CPC 2010 (hereinafter referred to as "Secondary Exceptions"). I will elaborate upon ss 95(2) and 95(1) CPC 2010 later.

30 Section 97(1) CPC 2010 is the equivalent of s 354(1) CPC 1985. One of the changes in s 97(1) CPC 2010 is that the qualifying phrase "whether there is an appeal on conviction or not" has been moved to the beginning of s 97(1) CPC 2010. Secondly, the words "in any case" in s 354(1) CPC 1985 have been removed. Thirdly, s 97(1) CPC 2010 provides specifically that the High Court may impose conditions for bail other than those required by a police officer or a Subordinate Court whereas

s 354(1) CPC 1985 stipulates that the High Court may (only) reduce or increase the bail amount, aside from admitting the accused to bail.

31 After CPC 2010 came into force, the High Court had to grapple with a similar question to that considered in *Selvam*. In *Hisham*, the applicant had been charged with an offence punishable with a maximum sentence of 20 years' imprisonment. A Subordinate Court denied him bail on the ground that it had no jurisdiction to do so by virtue of s 95(1)(*a*) CPC 2010. The applicant filed a criminal motion in the High Court to seek bail. One of the questions which the High Court considered was whether the prohibition in s 95(1)(*a*) CPC 2010 applied to the High Court. Choo Han Teck J said at [7] to [9]:

> 7 …
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> In *Selvamsylvester*, Kan Ting Chiu J expressed the view that a harmonious reading of ss 352(1) and 354(1) dictated that the latter should be read subject to the former, that is, s 352(1) circumscribed both the High Court's and the Subordinate Court's power to grant bail (at [8] and [9]). However, Kan J nonetheless held that the relationship between ss 352(1) and 354 was not conclusively settled and therefore dealt with the case on the assumption that the prohibition in s 352(1) against releasing certain accused persons on bail did not extend to the High Court (at [20]).
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> 8 In contrast, the position taken by the Malaysian Courts is clear: the prohibition against granting bail in the Malaysian equivalent of s 352(1) applies only to the Subordinate Court and not also to the High Court (see *Re K S Menon* [1946] 1 MLJ 49 ; *Shanmugam v Public Prosecutor* [1971] 1 MLJ 283 ; *Public Prosecutor v Dato' Balwant Singh* [2002] 4 MLJ 427). The same position has been taken in India (see *Nga San Htwa* (1927) ILR 5 Ran 276; *King Emperor v Joglekar* AIR 1931 All 504; *Gurcharan Singh v State* (1978) 1 SCC 118; 1978 SCC (Cri) 41). Further, in Tan Yock Lin, *Criminal Procedure* (Butterworths, 2010) ch X, Prof Tan Yock Lin argues that s 351 of the old CPC (the predecessor to s 92 of the CPC 2010) and s 352 of the old CPC (the predecessor to ss 93 and 95 of the CPC 2010), dealing with bail in the case of bailable and non-bailable offences respectively, should apply only to the Subordinate Court and not to the High Court. He wrote that the consequences of construing these provisions to apply to the High Court would be awkward, if not absurd, for two reasons. First, (at para 602):
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> > section 352 imposes a general prohibition on granting bail where the offence carries either the death penalty or life imprisonment. It would not be right to impose any such prohibition on the High Court's power to grant bail.
>
> Second, (at para 603):
>
> > [t]he structure ... in which these bail provisions are found is further argument that the High Court's power to grant bail is outside these sections. Thus, section 352(4) and section 354(2) cover essentially the same ground. The former states that: 'Any court may at any stage of any proceeding under this Code cause any person who has been released under [section 352] to be arrested and may commit him to custody.' The latter states that: 'The High Court may at any stage of any proceeding under this Code cause any person who has been released under [section 354] to be arrested and may commit him to custody.' If section 352(4) included the High Court, section 354(2) would be somewhat superfluous.
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> The language of ss 352(4) and 354(2) of the old CPC has largely been preserved in ss 93(5) and 97(2) of the CPC 2010 respectively. In support of Prof Tan's position, Prof Chandra Mohan has argued that the mention of the High Court in only s 354 and not ss 351 and 352 must be

deliberate and hence subject to the *expressio unius est exclusio alterius* rule of interpretation (Chandra Mohan, "The High Court's Latest Bail Decision: Overdue for 50 Years?" *Singapore Law Gazette* (May 2006) at 36). I am in full agreement with these views.

9 Apart from the above arguments against applying s 352 of the old CPC to the High Court, there are further reasons for not construing ss 93 and 95 of the CPC 2010 as applying to the High Court. Under the old CPC, if s 352(1) applies to the High Court, then the Subordinate Court and the High Court would not be able to grant bail only in the limited instances where there appear reasonable grounds for believing that an accused is guilty of an offence punishable with death or life imprisonment. The courts would continue to retain some measure of discretion in the determination of whether the "reasonable grounds" threshold is crossed. In contrast, the newly worded s 95(1)(*a*) of the CPC 2010 is such that if that provision also applies to the High Court, then bail would be totally prohibited once the Prosecution decides to charge an accused with an offence falling within s 95(1)(*a*), and the discretion of any court totally ousted. That cannot be the intention of Parliament because such a drastic change in the law will require clear and express Parliamentary language. Since s 93 provides that the court has power to grant bail save in the instances covered by s 95(1), there would have been no need for s 97(1) if the High Court's powers are also subject to s 95(1). Section 97(1), which states that "the High Court may grant bail to any accused before it", must mean what it says. It means that the High Court can grant bail even to accused persons charged with offences falling within s 95(1)(*a*).

32 In 2012, amendments were proposed to CPC 2012. The amendments were to be enacted through the Statutes (Miscellaneous Amendments) Bill (Bill No 22 of 2011) ("the Bill"). Most of the 2012 amendments are not relevant for present purposes, although one amendment – which introduced a new s 25(2)(*b*) – is relevant in respect of an argument which I will come to later. On 18 January 2012, the Minister explained various amendments in Parliament on the second reading of the Bill. As the amendments did not touch upon the question whether the High Court may grant bail in the situations covered under s 95(1), a Member of Parliament asked whether the Bill could have included an amendment to clarify the position. I now set out the relevant portion of the Minister's reply (which I have referred to above at [16] and [19] as the Minister's statement) (see *Singapore Parliamentary Debates, Official Report* (18 January 2012) vol 88):

> As regards the two points made by the hon. Member, Ms Sylvia Lim, I think the question on bail and sections 95, 97 [CPC 2010], 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.

33 The Bill was eventually passed and the amendments were effected on 1 March 2012.

34 Thereafter, a similar issue was raised in May 2012 in the High Court in an application for bail, this time in the context of extradition proceedings. In *Christanto*, the applicant was wanted by the Commonwealth of Australia to stand trial for two charges pertaining to an alleged conspiracy to bribe a foreign public official. The applicant was in remand pursuant to a warrant for apprehension made upon a request from the Australian authorities under the Extradition Act. His application for bail was denied by a Subordinate Court, specifically the District Court. He then filed a criminal motion to seek bail from the High Court under s 97 CPC 2010. His application was heard by Choo J.

35 Choo J was of the view that the High Court's power to consider the criminal motion under s 97 CPC 2010 was a statutory power of review as the District Court's decision to refuse to grant bail was not appealable. The alternative justification was that the power to consider the application arose from the High Court's inherent jurisdiction (*Christanto* at [6]).

36 Choo J noted that the Attorney-General sought to limit *Hisham*'s reasoning to the first limb of s 95(1) CPC 2010, *ie*, s 95(1)(*a*). Instead, he held that *Hisham* applied to every limb. He stated at [7]:

> …
>
> 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 [*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. …

37 Choo J also regarded the Minister's endorsement of *Hisham* as unequivocal parliamentary approval of *Hisham*'s interpretation of s 97(1) CPC 2010. He also noted that the Minister did not restrict his response to the first limb of s 95(1) CPC 2010 (*Christanto* at [8]).

38 He then dealt with the point that the definition of "accused" in s 95(3) CPC 2010 as including a "fugitive" under the Extradition Act was not replicated in s 97 CPC 2010. He said at [8] to [11]:

> 8 … 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 s 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 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 [*sic*] 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

417.–(1) Any person -

(*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.

39 After *Christanto* was decided, CPC 2012 was published in August 2012. Therefore, in terms of chronology, we have:

(a) CPC 1985;

(b) *Selvam*;

(c) CPC 2010 which took effect on 2 January 2011;

(d) *Hisham*;

(e) 2012 amendments effected on 1 March 2012;

(f) *Christanto*;

(g) CPC 2012 published in August 2012;

(h) the present application in which the Applicant was arrested on 21 May 2013.

Selvam

40 I go back to the days when CPC 1985 was in force.

41 In *Selvam*, Kan J started off on the premise that s 352(1) CPC 1985 precluded both the Subordinate Courts and the High Court from releasing a person coming within the 1985 Exception on bail. In the light of that premise, he was of the view that interpreting s 354(1) CPC 1985 as allowing the High Court to grant bail would result in an inconsistency with s 352(1) CPC 1985. In order to read both provisions in harmony, Kan J was of the view that s 354(1) should be construed as empowering the High Court to grant or vary bail for persons whose cases were still being dealt with by police officers and the Subordinate Courts but not for persons who came within the 1985 Exception.

42 Was the conclusion in *Selvam* wrong? It will be remembered that s 352(1) CPC 1985 refers to a person (accused of any non-bailable offence) being, *inter alia*, brought before "a court". It allows "that court" from releasing him on bail but not if he comes within the 1985 Exception. In my view, the natural and ordinary meaning of "a court" refers to any court and would include both the Subordinate Courts and the High Court. Accordingly, I would also have started off on the same premise as Kan J.

43 What then of s 354(1) CPC 1985? It seems to me that it was intended to clarify that the High Court is empowered to grant or vary bail before and after an accused person is convicted. For example, if an accused person is denied bail by a Subordinate Court before he is committed to trial in the High Court, s 354(1) makes it clear that the High Court can still grant him bail even though he has already been denied bail by a Subordinate Court. Likewise, if bail is already offered to him by a Subordinate Court, s 354(1) makes it clear that the High Court can reduce or increase the bail amount. Furthermore, if there is a conviction by a Subordinate Court and the appeal of the accused person to the High Court is in respect of sentence only, s 354(1) also makes it clear that the High Court is still empowered to grant bail pending the hearing of the appeal.

Hisham

44 I come now to CPC 2010 and the Indian and Malaysian cases Choo J relied on in *Hisham.* I will start with the Indian cases first.

4 5 *King Emperor v Nga San Htwa and others* AIR 1927 Rangoon 205 ("*Nga San Htwa*") dealt with ss 497 and 498 (as amended in 1923) of the Code of Criminal Procedure, 1898 (Act No 5 of 1898) (India) ("Indian CPC"). Sections 497(1) and 498 Indian CPC are the equivalent of ss 352(1) and 354(1) CPC 1985. The exception in s 497(1) Indian CPC precludes a court from granting bail if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life ("the prohibited circumstances"). I need not mention other differences between the Indian CPC and CPC 1985.

46 A reference was made to the Full Bench in *Nga San Htwa* to determine the question – "to what extent is the discretion of a Court to release an accused on bail fettered by the provisions of s 497 (Indian CPC)?" Rutledge CJ referred to an earlier case, *H M Boudville v King Emperor* AIR 1925 Rang 129, in which the court said, "the High Court is not limited within the bounds of (s 497)… [i]t has absolute discretion in the matter." Rutledge CJ agreed that that statement was quite accurate. He then went on to say that absolute discretion was given by s 498. However, he also said that the High Court must exercise the discretion judicially and since a Magistrate's discretion to grant bail was unfettered except for the two classes mentioned in s 497, the High Court ought not to grant bail except for "exceptional and very special reasons". The other two members of the Full Bench concurred with him.

47 With due respect, it seemed to me that the Full Bench had assumed, without analysis, that s 498 is not circumscribed by the exceptions contained in s 497(1) in view of the words in s 498 which appear to give the High Court an unfettered discretion.

48 In *Emperor v Joglekar and others* AIR 1931 All 504, the Full Bench also appeared to have proceeded on that assumption. They said at pp 118 and 119:

> …
>
> Section 498 of the Code of Criminal Procedure gives an unfettered discretion to the High Court or the court of session to admit an accused person to bail. It is a mistake to imagine that section 498 is controlled by the limitations of section 497 except when there are not reasonable grounds for believing that the accused committed the offence, or there are reasonable grounds for believing that he is not guilty, in which cases it becomes a duty to release him. Magistrates can proceed under section 497 only and their discretion is regulated by the provisions of that section; but section 498 confers upon a Sessions Judge or the High Court wide powers to grant bail which are not handicapped by the restrictions in the preceding section. The discretion is unfettered, but of course it cannot be exercised arbitrarily, but must be exercised judicially. There is no hard and fast rule and no inflexible principle governing such discretion. The only principle that is established is that there should be a judicial exercise of that discretion. It is not any one single circumstance which necessarily concludes the decision, but it is the cumulative effect of all the combined circumstances that must weigh with the court. The considerations are too numerous to be classified or catalogued exhaustively.

49 The third Indian case is *Gurcharan Singh & Ors v State (Delhi Administration)* 1978 AIR 179 ("*Gurcharan Singh*"). Two points are worthy of note. Firstly, that was a case involving the revocation of bail previously granted and not the granting of bail. Secondly, and more importantly, the applicable law then was the Code of Criminal Procedure, 1973 (Act No 2 of 1974) (India). The relevant provisions, for our purposes, were ss 437(1) and 439(1). Section 437(1) stated:

> 437. When bail may be taken in case of non-bailable offence.
>
> (1) When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court *other than the High Court or Court of Session*, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life; Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail:
>
> Provided further that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.
>
> [emphasis added]

50 As can be seen, s 437(1) provides that a court cannot grant bail in the prohibited circumstances. However, s 437(1) expressly refers to a court as one "other than the High Court or Court of Session". The prohibition in s 437(1) from granting bail for an offence mentioned therein is not found in s 439(1) which applies to the High Court and the Court of Session.

51 As s 437(1) is expressly stated to be inapplicable to the High Court, *Gurcharan Singh* does not provide direct guidance on the interpretation of s 352(1) CPC 1985.

52 I come now to the Malaysian cases. *Re K S Menon* [1946] 12 MLJ 49 ("*Re K S Menon*") dealt with ss 388(1) and 389 of the Federal Malay States Criminal Procedure Code (FMS Cap 6) (Malaysia). Sections 388(1) and 389 are the equivalent of ss 352(1) and 354(1) CPC 1985 and s 389 refers to "a Judge" specifically instead of to the High Court.

53 In that case, A J Bostock-Hill (President) cited with approval, but without analysis, the statement of Rutledge CJ in *Nga San Htwa* that the High Court has absolute discretion in granting bail but that it ought not to grant bail (for the offences in question) except for exceptional and very special reasons.

54 As mentioned above, Kan J was not persuaded by *Re K S Menon* that the Singapore High Court has an absolute discretion to grant bail under s 354(1) CPC 1985 for offences coming within the 1985 Exception.

5 5 *Shanmugam v Public Prosecutor* [1971] 1 MLJ 283 was also of limited assistance. The High Court there cited *Re K S Menon* for a different issue and then said, again without analysis, that a president or a magistrate has no power to grant bail under s 388(1) if the exception contained there applied, *ie*, if there appears reasonable grounds for believing that the accused has been guilty of an offence punishable with death or with imprisonment for life. There was no express discussion as to whether the High Court has an absolute discretion in such a situation. Perhaps this was because such a discretion was assumed. The High Court, however, also agreed with *Re K S Menon* and another case that an applicant for bail in such a situation "must show exceptional and very special reasons".

56 In *Public Prosecutor v Dato Balwant Singh* (No 1) [2002] 4 MLJ 427, the issue was not whether the High Court has unfettered discretion to grant bail in the prohibited circumstances. The issue was whether the accused satisfied the medical exception in the second paragraph of s 388(1) and also whether the prohibited circumstances even arose in the first place.

57 Therefore, I did not find the Indian or Malaysian cases, which Choo J referred to in *Hisham*, to be persuasive authorities for the proposition that the High Court has unfettered discretion to grant bail notwithstanding the 1985 Exception ("the Proposition").

58 I also did not find the two reasons from Prof Tan Yock Lin (in Tan Yock Lin, *Criminal Procedure* (Butterworths, 2010) ch X), which Choo J also referred to in *Hisham* (at [8]), to be persuasive support for the Proposition. As regards the first reason, I did not understand why it would not be right to impose the general prohibition in s 352(1) CPC 1985 on the High Court. Furthermore, the question is not whether it is right or wrong to do so but whether s 352(1) CPC 1985 is confined to the Subordinate Courts as a matter of construction. As stated above, the ordinary and natural interpretation of "a court" in s 352(1) is that it is not so confined. Following from that, it would appear awkward to me to say, on the one hand, that s 352(1) imposes a general prohibition on both the Subordinate Courts and the High Court and then, on the other hand, that the prohibition does not apply to the High Court because of s 354(1).

59 As for Prof Tan's second reason, it was not clear to me how the structure of the bail provisions provided further support for the Proposition. For the reasons stated above at [43], I was of the view that the structure did not support the Proposition. Prof Tan's argument using ss 352(4) and 354(2) on the re-arrest of persons released on bail was also unpersuasive. These provisions were connected to ss 352(1) and 354(1) respectively in the first place. His argument suggested that if s 352(1) applies

to the High Court, then s 354(1) would be superfluous. Hence, s 354(2) would also be superfluous to s 352(4). I did not think that s 354(1) is superfluous to s 352(1) in the first place. For the reasons stated in [43] above, s 354(1) simply performs a different function from s 352(1). It followed that I did not think that s 354(2) is superfluous to s 352(4).

60 I was also not persuaded by the views of Prof Chandra Mohan which Choo J also referred to in *Hisham*. Although s 352(1) does not expressly refer to the High Court, this was because it already refers to "a court" which in its natural and ordinary meaning covers both the Subordinate Courts and the High Court. There is no need therefore to refer expressly to the High Court in s 352(1). The position is different for s 354(1) because that provision is meant to refer to the High Court to the exclusion of the Subordinate Courts.

61 However, Prof Mohan also pointed out in his 2006 article (see S Chandra Mohan, "The High Court's Latest Bail Decision: Overdue for 50 Years?" (2006) Law Gazette 23) that s 354(1) is wide in terms. It states that the High Court may "in any case whether there is an appeal on conviction or not, direct that any person shall be admitted to bail".

62 He mentioned the cardinal principles of statutory interpretation:

(a) that a statute must not be interpreted in a way that fetters the court's discretion; and

(b) that words in a section must be given their natural and ordinary meaning.

63 In his opinion, *Selvam* did not appear to apply either principle.

64 I refer to the second principle first, *ie*, that words must be given their natural and ordinary meaning. I agree with the principle. However, as mentioned above, s 352(1) refers to "a court" and the ordinary and natural meaning is that it refers to both the Subordinate Courts and the High Court. Prof Mohan had assumed, because of s 354(1), that "a court" in s 352(1) is confined to the Subordinate Courts. I did not think that the assumption should dictate the conclusion. On the face of the provisions, there is an apparent inconsistency between ss 352(1) and 354(1) as Kan J mentioned. There is no dispute that the provisions should be read in harmony but how should that be done?

65 One way of achieving the harmony is to construe "court" in s 352(1) to mean the Subordinate Courts and not the High Court. However, such a construction will do violence to the ordinary and natural meaning of "a court". Another way of achieving the harmony is the approach suggested by Kan J and by me (see [43] above). Even then, I accepted that this means that the words "in any case" in s 354(1) will have to be read down to mean in any case other than the 1985 Exception.

66 As for the first principle of statutory interpretation mentioned by Prof Mohan, I believe that what he meant was that a statute should not be construed to fetter a court's discretion in the absence of clear words to that effect. However, it seemed to me that the words "he shall not be so released" in s 352(1) together with the reference to "a court" clearly mean that both the Subordinate Courts and the High Court are not to release a person coming within the 1985 Exception on bail. The problem does not arise from a lack of clarity in the terms of s 352(1) themselves but because the terms of s 354(1) suggest an inconsistency with s 352(1). On the other hand, one could argue that because of s 354(1), the scope of s 352(1) has become unclear and therefore s 352(1) should be construed to refer to the Subordinate Courts only.

67 Prof Mohan referred to two other Malaysian cases which supported the Proposition, *ie*, *PP v Zulkifflee bin Hassan* [1990] 2 MLJ 215 at [217] and *PP v Dato Mat* [1991] 2 MLJ 186 at [188]. I do

not propose to elaborate on these two Malaysian cases as they do not take the matter much further than the cases examined above at [52]–[56].

68 It seemed to me that construing "in any case" in s 354(1) to mean in any case other than the 1985 Exception required less violence to the language than construing "a court" in s 352(1) to mean the Subordinate Courts only.

69 Furthermore, there is yet another principle of statutory interpretation which should not be ignored. This is the principle that an interpretation which does not render a provision otiose is to be preferred to one that does (see F A R Bennion, *Bennion on Statutory Interpretation: A Code* (LexisNexis, 5th Ed, 2008) at p 558, citing the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void)). If s 352(1) excludes the High Court, then the 1985 Exception is rendered otiose. It would have been a simple matter for a person coming under the 1985 Exception to circumvent it by applying to the High Court for bail. However, if s 354(1) is circumscribed by s 352(1), this does not render the High Court's power to grant or vary bail otiose. The High Court's power under s 354(1) still extends to all the other instances outside of the 1985 Exception and it also applies to the situations mentioned by Kan J and I (see above at [43]). Hence, I was of the view that Kan J's interpretation was the better one.

70 I come now to Choo J's reason in *Hisham* at [9]. He was of the view that if s 95(1)(*a*) CPC 2010 applies to the High Court as well as to the Subordinate Courts, then both the Subordinate Courts and the High Court have no discretion to grant bail (unless the Secondary Exceptions set out in s 95(2) apply). In its predecessor, s 352(1) CPC 1985, the courts (assuming that s 352(2) extends to the High Court as well) retained some measure of discretion in the determination of whether the "reasonable grounds" threshold is crossed. As there is no such room for discretion in s 95(1)(*a*) CPC 2010, Choo J was of the view that such a change would be so drastic as to require clear and express parliamentary language. Since I reached a different conclusion from Choo J on the meaning of s 352(1), it followed that I did not think that s 95(1)(*a*) CPC 2010 effected a change. In any event, I was of the view that the language to fetter the High Court's power to grant bail in certain circumstances is clear. I will elaborate on this later.

71 I will also later cover Choo J's point that since s 93 CPC 2010 provides that the court has power to grant bail save in the instances covered by s 95(1), there would be no need for s 97(1) if the High Court is also subject to s 95(1).

72 Before I come back to the terms of the relevant provisions in CPC 2010, it is worthwhile to reiterate that s 352(1) CPC 1985 provides for bail to be made available to a person accused of a non-bailable offence except in the instances mentioned which I have referred to as "the 1985 Exception". The provision allowing bail for non-bailable offences and the 1985 Exception are found in the same section.

The position under CPC 2010

73 Since CPC 2010, the provision allowing bail for non-bailable offences is found in s 93(1) and the exceptions are found in s 95(1).

74 Section 93(1) is stated expressly to be subject to s 95(1). Like the predecessor s 352(1) CPC 1985, s 93(1) refers expressly to a person accused of a non-bailable offence being brought before "a court". While s 352(1) CPC 1985 mentions that such a person may be released on bail by "that court", s 93(1) provides for the release on bail by "the court".

75 Furthermore, while s 95(1) CPC 2010 does not expressly refer to "a court" or "the court", s 95(2) does expressly refer to "the court".

76 In the scheme of things, all these three provisions should be construed together:

(a) Section 93(1) is the general provision allowing bail for non-bailable offences.

(b) Section 95(1) contains exceptions to s 93(1) and prohibits the granting of bail in the instances mentioned in s 95(1).

(c) Section 95(2) contains the Secondary Exceptions. Thus, even if any of the instances in s 95(1) apply, bail may still be granted in the circumstances mentioned in s 95(2).

77 Therefore, when considered in context, ss 93(1), 95(1) and (2) all refer to a "court" either expressly or by implication. In the case of s 95(1), this is by implication.

78 Significantly, there is now a definition of "court" in s 2 CPC 2010 whereas there was no definition of "court" in CPC 1985. I thank the Respondent for drawing this definition to my attention which was neither considered by the Applicant in her submissions nor by the court in *Hisham*. In fairness, I should mention that perhaps neither side in *Hisham* had brought the court's attention to this definition. Indeed, in *Hisham*, the respondent apparently accepted that the High Court has an unfettered discretion under s 97(1) CPC 2010 to grant bail notwithstanding s 95(1)(*a*).

79 The three Malaysian cases which I have elaborated on above at [52]-[56] do not mention whether there is a definition of "court" in the applicable Malaysian legislation. Likewise, the two Indian cases which I have elaborated on above at [45]-[48] do not mention whether there is a definition of "court" in the applicable Indian legislation.

80 I should also mention that the 2010 textbook, which the court referred to in *Hisham*, (see [58] above) was updated in or about December 2011 by Prof Mohan. The updated text is Tan Yock Lin and S Chandra Mohan, *Criminal Procedure in Singapore and Malaysia* (LexisNexis, Looseleaf Ed, 2012). Paragraphs 603 and 604 thereof reiterate the previous text with an updated reference in a footnote to *Hisham* and the 2006 article by Prof Mohan (see [61] above). However, these paragraphs do not discuss the definition of "court" in CPC 2010.

81 Section 2 CPC 2010 defines "court" to mean "the Court of Appeal, the High Court, a District or a Magistrate's Court, as the case may be, which exercises criminal jurisdiction." It seemed to me that this definition laid the matter to rest.

82 However, if *Hisham* is correct on the Proposition, then this means that there are three alternative interpretations:

(a) Sections 93(1) and 95(2) include the High Court but s 95(1) does not; or

(b) Section 93(1) includes the High Court but both ss 95(1) and 95(2) do not; or

(c) All the three provisions, *ie*, ss 93(1), 95(1) and (2) exclude the High Court.

83 The first alternative is not persuasive because the structure of the provisions suggests that ss 95(1) and 95(2) refer to the same court or courts. The second alternative means that notwithstanding the definition in s 2 CPC 2010, the "court" referred to in s 93(1) is different from the

"court" referred to in s 95(2). I did not think that that was a permissible approach. Likewise, the third alternative means that, notwithstanding the definition, the "court" referred to specifically or impliedly in all the three provisions excludes the High Court. Again, I did not think that that was a permissible approach.

84 In my view, it is clear that the High Court is included in ss 93(1), 95(1) and 95(2). CPC 2010 is compatible with the view expressed in *Selvam* before either *Hisham* or *Christanto* was decided. These two cases were decided after CPC 2010 had come into force.

85 What then of s 97(1) CPC? If s 97(1) is interpreted to support the Proposition then there is an inconsistency with s 95(1) unless one is still persuaded that s 95(1) does not apply to the High Court. The only argument for that is to say that, because there will otherwise be an inconsistency with s 97(1), s 95(1) must be construed as applying only to the Subordinate Courts. I did not find such an argument persuasive. It proceeds on the premise that s 97(1) will necessarily be inconsistent with s 95(1) if s 95(1) includes the High Court and ignores the definition of "court" set out in s 2.

86 In my view, the purpose of s 97(1) is as stated in *Selvam*, when its predecessor was being considered. I have elaborated on that purpose at [43] above. Therefore, I did not consider s 97(1) to be inconsistent with s 95(1) if s 95(1) includes the High Court.

87 It seemed to me that Parliament has stated expressly and clearly in s 95(1) that no bail is to be granted in the instances set out in ss 95(1)(*a*) to (*c*) unless any of the Secondary Exceptions apply.

88 As intimated above (at [69]) in the discussion on ss 352(1) and 354(1) CPC 1985, if the High Court is not circumscribed by s 95(1), this would mean that all Parliament effectively did was simply transfer the function of granting bail for the instances set out in s 95(1) from the Subordinate Courts to the High Court. This would render the substance of s 95(1) otiose. Furthermore, if that was the case, the imperative language in s 95(1) would not have been used, "An accused *shall* not be released on bail or on personal bond if …" [emphasis added].

89 After *Hisham* was decided, the Minister made the statement in Parliament which I have referred to (see [32] above and the references therein). Thereafter the 2012 amendments were effected. One of the amendments has some bearing on a point raised by the Applicant and the Respondent as I shall elaborate on later below. Otherwise, the applicable provisions are substantially the same.

Christanto

90 I come now to *Christanto* which, as mentioned above, was a case dealing with an application for bail in extradition proceedings. Therefore, s 95(1)(*c*) was in contention. This time, the respondent did contest the Proposition although it appears that, again, the definition of "court" in s 2 CPC 2010 was not brought to the attention of Choo J.

91 In *Christanto*, Choo J reiterated his views in *Hisham* and noted the Minister's endorsement of *Hisham*. In the context of extradition proceedings, Choo J dealt with the argument that s 97 does not apply to extradition proceedings because in s 95(3), there is a definition of "accused" which includes a "fugitive" but that that definition is confined to s 95 and hence does not apply to s 97. Choo J's reasons for concluding that s 97 also applies to extradition proceedings are set out in [9] to [11] of *Christanto* which I have set out above at [38].

The provisions of the Extradition Act

92 Before I address the reasons given by Choo J, I would like to address one point which the Applicant and the Respondent were apparently agreed on. They proceeded on the premise that, at the very minimum, s 95(1)(*c*) precluded the Subordinate Courts from granting bail in extradition proceedings. The dispute was whether the High Court is also so precluded.

93 It was not in dispute that notwithstanding the introduction of s 95(1)(*c*) in 2010, no amendment was made to the Extradition Act. It was also not in dispute that there are provisions in the Extradition Act which suggest that bail may be granted in extradition proceedings. The structure of that Act is, *inter alia*, as follows:

(a) Part II relates to extradition to foreign states;

(b) Part III relates to extradition from foreign states;

(c) Part IV deals with extradition to and from declared Commonwealth countries; and

(d) Part V deals with extradition to and from Malaysia.

94 Naturally, the substance of some of the provisions in Part II is repeated in Parts IV and/or V. For present purposes, I need only refer to the provisions in Part IV as it is unnecessary to refer to similar provisions in Parts II and/or V.

95 Section 25(2) Extradition Act allows a Magistrate, before whom a person who is apprehended under a warrant issued under s 24 is brought, to remand such a person in custody or on bail for a period or periods not exceeding seven days at any one time. The Applicant's argument was that because s 25(2) allows a Magistrate to grant bail, it is inconsistent with s 95(1)(*c*) CPC 2010 which denies bail to such a person. The Respondent agreed that there is such an inconsistency but submitted that s 95(1)(*c*) should prevail as it was enacted later.

96 In my view, even if there was an inconsistency, this did not help the Applicant. The Applicant was already proceeding on the premise that in view of s 95(1)(*c*), the Subordinate Courts are precluded from granting bail in extradition proceedings. The only question was whether the High Court is also precluded. It seemed to me that if s 95(1)(*c*) CPC 2010 already creates an inconsistency with s 25(2) of the Extradition Act *vis-à-vis* the Magistrate Court, the inconsistency cannot be used to exclude the High Court from s 95(1).

97 I was of the view that in fact there was no inconsistency. The prohibition against the granting of bail in s 95(1)(*c*) is not as absolute as it seems. There are still the Secondary Exceptions and, for extradition proceedings, these are set out in s 95(2)(*a*) CPC 2010. While it might be true that the Secondary Exceptions are very limited in scope, they are nevertheless available.

The scope of the Secondary Exceptions

98 I will now come to one of the amendments made in 2012 which has a bearing on the above point. The amendment introduced a new provision as s 95(2)(*b*) and the substance of s 95(2) CPC 2010 came under a new s 95(2)(*a*) CPC 2012. This new s 95 CPC 2012 is set out above at [8].

99 Interestingly, the Respondent submitted that s 95(2)(*a*) CPC 2012 (like s 95(2) before the 2012 amendment), does not apply to extradition proceedings. Hence, there is not even a limited discretion, whether of the Subordinate Courts or of the High Court, to grant bail in extradition proceedings (except under s 418 CPC read with s 417 CPC 2010 which I will come to later). Therefore, according

to the Respondent, there is still an inconsistency between s 25(2) Extradition Act and s 95(1)(*c*) CPC 2012 but, as mentioned above (at [95]), the latter is to prevail.

100 The Respondent pointed out that s 95(2)(*a*) refers to a juvenile or a sick or infirm person accused of "such an offence". The argument was that this was a reference to s 95(1)(*a*) and not to s 95(1)(*b*) or (*c*) as the latter two provisions do not refer in terms to any offence. Therefore, the reference to "an offence" in s 95(2)(*a*) must refer only to s 95(1)(*a*).

101 There was some merit in this submission. Yet, s 95(2) starts off with the following words, "Notwithstanding subsection (1) …". It does not say, "Notwithstanding subsection (1)(*a*) …". This suggests that s 95(2) was meant to apply to all the limbs of s 95(1) and not just to s 95(1)(*a*) alone.

102 Furthermore, while s 95(2)(*a*) refers to "such an offence", s 95(2)(*b*) refers to "an offence referred to in subsection (1)(*a*)". The latter is specifically referable to s 95(1)(*a*) *only* whereas the former is not. I was mindful that s 95(2)(*b*) was introduced only in 2012 whereas s 95(2)(*a*) was already introduced as s 95(2) in CPC 2010. Arguably this might have resulted in the difference in terminology. On the other hand, it seemed unlikely to me that the draftsman of s 95(2)(*b*) CPC 2012 was unaware of the terminology used in what was then s 95(2) CPC 2010.

103 It seemed to me that the difference in terminology was not inadvertent but deliberate and that if s 95(2)(*a*) was to be confined to s 95(1)(*a*), it would have the same specific reference to s 95(1)(a) *only*, as is found in s 95(2)(*b*).

104 Secondly, if s 95(2)(*a*) is confined to s 95(1)(*a*), then bail is unavailable to any person caught under s 95(1)(*b*) and (*c*) even if he were a juvenile or a sick or infirm person. It seemed to me unlikely that Parliament was unprepared to extend the Secondary Exceptions to the situations set out in s 95(1)(*b*) and (*c*). In the absence of clear language to that effect, the better view is that Parliament did not intend that. I add that I do not think that s 25(8) Extradition Act is an adequate substitute for s 95(2)(*a*) CPC 2010. Under s 25(8) Extradition Act, where a Magistrate is of the opinion that it would be dangerous to the life or prejudicial to the health of a person to commit him to prison, the Magistrate may instead order that that person "be held in custody at the place where he is for the time being, or at any other place to which the Magistrate considers that he can be removed without danger to his life or prejudice to his health …". This provision applies only after the Magistrate would otherwise have decided to commit the person to prison and does not apply before the committal proceeding is heard. Secondly, ordering the person to be held somewhere else other than prison is not the same as releasing him on bail.

105 Furthermore, the reference to "an offence" in s 95(2)(*a*) might be construed to include ss 95(1)(*b*) and 95(1)(*c*) without doing violence to their terms. The offence in s 95(1)(*b*) would be any non-bailable offence for which a person is accused and for which he was previously released on bail or personal bond but, for example, he did not make himself available for investigation. The offence in s 95(1)(*c*) would be an extraditable offence for which a warrant of apprehension has been issued under the Extradition Act.

106 There was one other point that appeared to lend support to the interpretation that s 95(2)(*a*) applies to s 95(1)(*c*) as well. Section 95(2)(*a*) refers to any sick or infirm person "accused" of such an offence. Under s 95(3), "accused" includes a "fugitive" as defined in the Extradition Act. However, the Respondent submitted that in s 95(3), "accused" is used as a noun whereas the reference to any sick or infirm person "accused" of such an offence in s 95(2)(*a*) uses it as a verb. This submission was not entirely without merit. On the other hand, s 95(2)(*b*) allows the court to "release on bail an accused charged with an offence referred to in subsection (1)(*a*)". Here "accused" is used as a noun

but clearly s 95(2)(*b*) does not, in context, refer to extradition proceedings since it is specifically confined to s 95(1)(*a*). Of course, when s 95(3) states that "accused" includes a "fugitive" this must still be subject to the context allowing such an interpretation. Section 95(2)(*b*), when read in context, does not allow such an interpretation whereas s 95(2)(*a*) does. The point however is that while the Respondent's subtle argument about the differential use of the word as a noun and a verb may be valid, I was of the view that this was less persuasive than the considerations stated at [100]-[103] above. In view of those consideration and the definition of "accused" in s 95(3), I was of the view that s 95(2)(*a*) does apply to extradition proceedings (and to s 95(1)(*b*)) too.

107 On balance, I was of the view that there is no inconsistency between s 25(2) Extradition Act and s 95(1)(*c*) CPC 2010 although s 25(2) Extradition Act is now much reduced in scope because of s 95(1)(*c*). Even if there is an inconsistency, it did not help the Applicant as the later provision overrides the earlier.

The reasons in Christanto

108 I now come back to the reasons which Choo J gave in *Christanto* when he concluded that s 97(1) CPC 2010 (with the 2012 amendments) applies to extradition proceedings even though the definition in s 95(3) of an "accused" including a "fugitive" is omitted in s 97(1).

109 As regards the view at [10] of *Christanto* that Australian authorities lend weight to the reading of "fugitives" as a sub-set of accused persons, Choo J referred to one Australian authority in particular. That case is not helpful in the Singapore context because the statutory provisions are different. In Singapore, bail is precluded in certain specific instances set out in s 95(1) CPC 2012. The definition in s 95(3) of "accused" to include a "fugitive" as defined in the Extradition Act is also quite specifically stated to be applicable to s 95 only.

110 It may be that extradition proceedings are a form of criminal proceedings but that does not necessarily mean that s 97(1) applies to extradition proceedings. The Respondent's argument was that s 97(1) applies only to domestic criminal proceedings and not to extradition proceedings and the definition in s 95(3), which is not applicable to s 97(1), supports its contention. Therefore, s 97(1) cannot be used to override s 95(1)(*c*). I was of the view that because the definition in s 95(3) is not applied to s 97(1), this was a significant factor against the proposition that s 97(1) applies to extradition proceedings.

111 I turn now to the other reasons given by Choo J. He said that s 97 is a general governing provision intended to confer the High Court with discretionary jurisdiction to grant bail particularly in the light of the Extradition Act's silence on the matter. Accordingly "any accused" under s 97 must reasonably and necessarily be interpreted to include "fugitives" (see *Christanto* at [9] to [11]). In my view, the Extradition Act is only silent on the *High Court's* power to grant bail since s 25(2) mentions that a Magistrate may remand a person on bail. In any event, CPC 2010 was not silent on the matter. Section 95(1)(*c*) expressly and clearly precludes the granting of bail in extradition proceedings. Furthermore, it seemed to me that Choo J's reason was in actuality an assumption, *ie*, that s 97 is a general governing provision intended to give the High Court discretionary jurisdiction to grant bail. That assumption in itself already suggests the answer to the Issue (see [12] above) and, therefore, I was of the view that no weight should be given to this answer.

112 Choo J's other reason was that if s 97 excludes fugitives, this would deny such persons bail at the earliest opportunity (see *Christanto* at [9]). However, this reason assumes that s 97(1) is not circumscribed by s 95(1). If it is, then s 97(1) is still so circumscribed even if it applies to fugitives under the Extradition Act. So, we come back to the Issue which is the larger question.

113 On the Issue, Choo J was influenced by the established principle that an accused person is "innocent until proven guilty", which is also commonly referred to as the 'presumption of innocence'. On the other hand, in his earlier decision in *PP v Lim Yong Nam* [2012] 2 SLR 596 ("*Lim Yong Nam*"), he said at [12]:

> … A fundamental principle in criminal process is that until a person has been charged, he is presumed to be innocent of any wrongdoing that warrants detention unless the court is satisfied that he is a flight risk in the face of impending or ongoing police investigation. This is not the case here. Extradition proceedings are not a local criminal matter although there may be cases where the person to be extradited would have also committed an offence here. …

114 It seems that Choo J decided to depart from his own observation in *Lim Yong Nam*. In fairness, I should also mention that in *Christanto*, he clarified his substantive decision in *Lim Yong Nam* and decided that that decision should be read in the light of *Hisham*. He therefore concluded that the High Court has power to grant bail throughout extradition proceedings and this includes the period between the time when a warrant of committal is issued and the hearing of an application for an order for review of detention.

The presumption of innocence

115 Coming back to the application of the presumption of innocence in extradition proceedings, the Respondent submitted that that is not the paramount consideration in extradition cases.

116 In the United Kingdom, the following passage in the report on *R v Phillips* (1922) 38 TLR 897 at 898, where an appeal against a magistrate's decision to refuse bail was dismissed, states:

> He [the Lord Chief Justice Heward] thought that both the points urged on behalf of Phillips failed. In his view it was not the law that the King's Bench Division could not refuse bail. Nor did he think that cases of extradition were on the same footing as cases in this country. It was not a case of treaties extending to foreign countries rights denied to our own subjects. But we had entered into obligations and the strictness with which we fulfilled them was measured not by tenderness to the foreign country but by what we owed to our own honour. That did not mean that bail was to be refused in all cases; it was a matter for the discretion of the learned magistrate; it only meant that there were special grounds for care and caution.

117 In *R v Spilsbury* [1898] 2 QB 615, the defendant had sought bail after a magistrate had ordered his return to a foreign country to face a charge of riotous assault. The English court decided that there was power to grant bail but that the power ought to be exercised with "extreme care and caution". The application for bail was refused. That case involved the Fugitive Offenders Act 1881 (44 & 45 Vict c 69) (UK) but was cited by the Respondent as authority applicable to extradition proceedings as well, to support the argument that considerations for bail in domestic criminal cases do not apply to extradition cases.

118 The Respondent also cited the decision of the Supreme Court of the United States of American in *Wright v Henkel* 190 US 40 (1903) ("*Wright*") to support its argument. In that case, the court noted that there was no statute providing for admission to bail in cases of foreign extradition but was of the view that the lower courts had jurisdiction to grant bail. The court said at 62:

> 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 fulfil 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. And the same reasons which induced the language used in the statute would seem generally applicable to release pending examination.

…

119 The court then suggested that while bail should not ordinarily be granted in cases of foreign extradition, it may be granted in special circumstances. The court said at 63:

…

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.

120 In *Re Nacif-Borge* 829 F Supp 1210 (1993), the United States District Court for the District of Nevada said at 1214:

… The judicial reasoning in extradition cases parallels traditional bail evaluations with some obvious adjustments for the international ramifications of the bail decision. The opinions universally contain the following:

A. A presumption against bail exists in international extradition cases.

B. Only special circumstances will justify bail.

C. The person seeking bail has the burden of establishing an entitlement to bail.

D. An elevated standard of proof must be satisfied.

E. The person seeking bail cannot be a risk of flight or a danger to the community.

PRESUMPTION AGAINST BAIL

The presumption of innocence guarantees that defendants pending trial are entitled to a concomitant presumption in favour of bail in this country. … However, in foreign extradition cases, a presumption against bail exists due to the foreign relations interest of the United States in successfully returning persons subject to criminal prosecution to the requesting country. [*Wright*] (bail "should not ordinarily be granted in cases of foreign extradition"); *Salerno v. United States*, 878 F.2d 317, 317 (9th Cir. 1989).

121 On the other hand, the Applicant referred to other American cases to support the argument that ordinary considerations for bail in domestic criminal cases should continue to apply in extradition cases.

122 In *Thomas Beaulieu v James Hartigan* 430 F Supp 915 (1977), Tauro DJ said at 916-917:

> In the more contemporary reported cases, granting of bail pending completion of the extradition proceedings has been the rule rather than the exception.
>
> …
>
> In none of the cases dealing with the issue of bail in an extradition setting was a district judge who granted bail subsequently reversed by a reviewing court. Analysis of these cases leads me to the conclusion that the "special circumstances" doctrine of *Wright*, though still viable, must be viewed, in the light of modern concepts of fundamental fairness, as providing a district judge with flexibility and discretion in considering whether bail should be granted in these extradition cases. The standard of scrutiny and concern exercised by a district judge in an extradition case should be greater than in the typical bail situation, given the delicate nature of international relations. But one of the basic questions facing a district judge in either situation is whether, under all the circumstances, the petitioner is likely to return to court when directed to do so. Fundamentally, it is a judgment call by the district court based on the totality of the circumstances, including the extremely important consideration of this country's treaty agreements with other nations. A district judge should approach the bail situation in an extradition case with an added degree of caution, given the additional factor of an international treaty.

123 In that case, Tauro DJ denied the applicant *habeas corpus* relief but granted bail pending his appeal.

124 On the other hand, I note that the United States Court of Appeals, First Circuit, in *Thomas Beaulieu v James Hartigan* 554 F 2d 1 (1st Cir, 1977) decided that the district court should reconsider granting bail in the light of its affirmation of the denial of *habeas corpus* relief.

125 The Court of Appeals said at 2:

> … while bail may be granted in the sound discretion of the district court, the matter should be approached with caution and bail should be granted only upon a showing of special circumstances. Unlike the situation for domestic crimes, there is no presumption favoring bail. The reverse is rather the case. …

126 Another American case which the Applicant referred to was *Parretti v US* 122 F 3d 758 (9th Cir, 1997). In that case, Parretti was arrested on 18 October 1995 based on allegations made in a French arrest warrant charging Parretti with extraditable crimes. The United States District Court for the Central District of California denied his petition for *habeas corpus* and dismissed his bail application. His motion for emergency review was received on 21 November 1995. The majority of the United States Court of Appeals, Ninth Circuit, decided, *inter alia*, that his detention without bail violated the due process protection under the Fifth Amendment of the Constitution of the United States of America and ordered his release. On 6 May 1997, the court filed its opinions setting out its detailed reasons. The main opinion was delivered by Norris J. He said at 780:

> In essence, the government asks us to break new constitutional ground in holding that Parretti's "strong interest in liberty," *Salerno*, 481 U.S. at 750, 107 S.Ct. at 2103, may be "subordinated," *id*., to the government's interest in avoiding the risk of being unable to carry out its treaty obligations, however attenuated that risk might be. On that logic, the government would never have to prove that an extraditee was a flight risk. All extraditees could be detained without bail before their extradition hearings regardless of the magnitude of the risk of flight. Such a far-reaching exception to the principle that "liberty is the norm" cannot be justified by the government's asserted interest in taking no risk that it will be unable to deliver an extraditee if he

is found to be extraditable. Enforcement of our own laws, which, after all, is the governmental interest served by extradition treaties, does not justify pre-trial detention absent a finding of flight risk or dangerousness, and we see no reason, and the government suggests none, why its interest in fulfilling its treaty obligations is different from or any more compelling than its interest in enforcing our own criminal laws. Just as the government's asserted interest in avoiding all risk that a defendant will not appear for trial is not sufficient to justify pre-trial detention, the government's asserted interest in avoiding all risk that an extraditee will not appear for an extradition hearing cannot justify pre-hearing detention.

…

We repeat that the district court was free to decide anew whether to grant or deny Parretti bail once it found Parretti extraditable after his hearing. … Our holding is a limited one: until such time as an individual is found to be extraditable, his or her Fifth Amendment liberty interest trumps the government's treaty interest unless the government proves to the satisfaction of the district court that he or she is a flight risk.

127 Another member of the court, Reinhardt J, was of the view that *Wright* had been misinterpreted to mean that bail should not be granted in the absence of special circumstances. In his view, the relevant paragraph (see [118] above) which has been relied upon for such a proposition was a single, casual remark which had been blown out of all proportion.

128 The third member of the court, Pregerson J, dissented for reasons which are not material to our case.

129 For completeness, I should mention that subsequent to the decision to order his release, the full bench of the Ninth Circuit (with Reinhardt J dissenting) dismissed his appeal as Parretti had fled from the United States of America even before the opinion of 6 May 1997 was filed. The court also withdrew the opinion given on 6 May 1997 although Reinhardt J was of the opinion that the earlier majority opinion accurately set out the law on bail in extradition proceedings.

130 The Applicant also referred to *Christanto* at [16] where Choo J referred to a report of the Law Reform Commission of Hong Kong, *Bail in Criminal Proceedings* [1989] HKLRC 1 at para 3.2.6 which rejects any attempt to discriminate against a bail applicant by reference to class or status, to the extent that "[e]ven a fugitive offender is entitled to a determination on bail …".

131 I come now to Australian cases. The case of *United Mexican States v Cabal* [2001] HCA 60 ("*Cabal*") dealt with the Extradition Act 1988 (Cth) (Australia) under which bail could be granted if there are special circumstances justifying bail.

132 The High Court of Australia said at [44]–[45]:

44 Just as the Court has jurisdiction to grant bail in an ordinary criminal case, so it has jurisdiction to grant bail in an extradition case like the present. …

45 However, it does not follow that the principles that apply in criminal cases are fully applicable to extradition cases. First, Australia's international relations and standing are involved in extradition cases. They are seldom involved in domestic criminal cases. Second, the Court must take account of the purpose and policy of the Act. It would be a serious error to take the view that the enactment of the Act has no bearing on the application of the Court's incidental power to make an order granting bail to a person held under a s 19(9)(a) warrant. …

133 After referring to *Wright*, the High Court went on to say at [72]:

> In our opinion, it is an error in a bail application in an extradition matter to take into account that there is "a predisposition against unnecessary or arbitrary detention in custody". The Parliament has made it plain that bail is not to be granted unless special circumstances are proved. However unpalatable such a conclusion may be to the mind of the common lawyer, the Parliament believed that the fulfilment of Australia's treaty obligations makes the principles governing bail in domestic cases inapplicable in extradition cases. In extradition cases, the general rule is that defendants are to be held in custody whether or not their detention is necessary. Only when there is something special about a defendant's circumstances can the question of bail be considered. For that reason, it is erroneous to take into account "those circumstances which ordinarily would fall for consideration on an application for bail where a person is charged domestically for the commission of a crime". Those circumstances may be taken into account in considering the exercise of discretion after special circumstances have been established. But they can play no part in determining whether the applicant has established special circumstances.

134 Again, in *Vasiljkovic v Commonwealth* [2006] HCA 40, the High Court of Australia said at [34]:

> Plainly, extradition has serious implications for the human rights, and in particular for the personal liberty, of the person who is the subject of a request for surrender. Those implications are not limited to the case of a person who is an Australian citizen. The interference with personal liberty involved in detention during the extradition process (if that occurs), and in involuntary delivery to another country and its justice system is not undertaken as a form of punishment. No doubt, to the person involved, some of its practical consequences may be no different from punishment, but the purpose is not punitive. To repeat, the process involves no adjudication of guilt or innocence. It is undertaken for the purpose of enabling such an adjudication to be made in a foreign place, according to foreign law, in circumstances where Australia has no intention itself of bringing the person to trial for the conduct of which the person is accused.

135 After reviewing the above authorities, it seemed to me that, absent any legislative provisions to the contrary, there are valid arguments in favour of applying ordinary considerations for bail to an extraditable person pending the committal hearing and even after he is committed. This includes the principle of "innocent until proven guilty". The argument is even more compelling if it can be said that the foreign court would be likely to grant bail once that person is brought before it.

136 However, things have changed. Whereas there was in the past no statute expressly prohibiting bail in extradition proceedings and indeed, as mentioned above, there are provisions in the Extradition Act which permit bail to be granted, s 95(1)(*c*) was specifically introduced in 2010 to impose such a prohibition expressly and clearly. As suggested by the Australian cases, any notion about the presumption of innocence applying in extradition proceedings has to be considered in the light of legislation. In my view, that notion is subject to s 95(1)(*c*). Section 97(1) is also subject to s 95(1)(*c*) even if s 97(1) applies to extradition proceedings – which is questionable in the light of the fact that the definition of "accused" in s 95(3) is confined to s 95 only.

Review of detention

137 I come now to Choo J's reference to ss 417 and 418 CPC 2010 (at [11] of *Christanto*) which come under Part XXI Division 2 with the heading, *Special proceedings — Order for review of detention*. The predecessor provisions in CPC 1985 were ss 327 and 328 which come under Chapter XXXIII with the heading, *Habeas Corpus and Directions in the nature of Habeas Corpus*.

138 I note that s 417(1)(*a*) refers to a person who is detained in Singapore on a "warrant of extradition". This term is not found in the Extradition Act and it is unclear whether it means a warrant of surrender of fugitive or a warrant of commitment or a warrant of apprehension under the Extradition Act or any one of these warrants.

139 Choo J seemed to think it meant a warrant of commitment (see s 11(7) Extradition Act and *Christanto* at [11]). He was of the view that s 418, read with s 417, allows the High Court to grant bail only after a warrant of commitment is issued by a Magistrate, pending the hearing of an application before the High Court for an order for review of detention. He was also of the view that if the High Court is empowered to grant bail at this stage under s 418, it would be curious if the High Court has no power to grant bail to a person who was arrested under a warrant of apprehension pending the commitment hearing before a Magistrate.

140 However, the approach of Choo J on this point might be incorrect. He proceeded on the basis that it is only when a person is detained on a warrant of extradition that he may be admitted to bail under s 418(*a*). However, s 418(*a*) may not be tied down to s 417(*a*). Section 417(*a*) stipulates when a person may apply to the High Court for an order for review of detention whereas s 418(*a*) states when the High Court may grant bail, *viz*, "whenever it thinks fit". It seemed to me that the power of the High Court to grant bail under s 418(*a*) is not restricted to the stage when a warrant of extradition is issued even if a "warrant of extradition" means a warrant of commitment. If I am right, then the curious result mentioned by Choo J does not arise.

141 Furthermore, if a warrant of extradition includes a warrant of apprehension, then the curious result that Choo J mentioned does not arise.

142 If Choo J is correct that the High Court's power to grant bail under s 418(*a*) arises only after a warrant of commitment is issued, then I agree that it may be curious as to why the power is confined to that stage only, but, other considerations apply. If the High Court has power under s 97(1) to grant bail in extradition proceedings, when does s 418(1)(*a*) apply? If, as I believe, s 418(1)(*a*) applies only when the *legality* of the detention is being challenged, then there are two tracks for bail applications to be made to the High Court in extradition proceedings. The first is the ordinary bail application to be made under s 97(1). The second is to be made under s 418(1)(*a*) only when the legality of the detention is being challenged. A person who challenges the legality of the detention and who also seeks bail under ordinary bail considerations will therefore have to apply under both ss 418(1)(*a*) and 97(1). However, this still does not resolve the curious result which Choo J mentioned because it is still the case that when the legality of the detention is being challenged, the bail application can only be made after a warrant of commitment is issued. This is obtained regardless of whether the High Court can grant bail under s 97(1). Therefore, the curious result which Choo J mentioned does not support the Proposition.

143 Furthermore, if, as Choo J appeared to suggest, s 97(1) is wide enough to apply to an application for bail when the legality of the detention is being challenged, then a more curious result occurs. Such an interpretation would appear to render s 418(1)(*a*) otiose.

144 On the other hand, if I am correct that s 97(1) does not empower the High Court to grant bail in extradition proceedings because s 97(1) is subject to s 95(1)(*c*), then s 418(*a*) is another exception to s 95(1)(*c*). This means that, now, an application for bail in extradition proceedings can only be made under s 418(*a*) (unless s 95(2)(*a*) also applies).

145 One has to bear in mind again that s 95(1)(*c*) was specifically introduced in 2010 whereas previously there was no express prohibition against the granting of bail in extradition proceedings. If

s 95(1)(*c*) does not apply to the High Court, that would render it otiose. It would be a simple matter for any person who is the subject of extradition proceedings to apply for bail in the High Court and avoid s 95(1)(*c*). Although Choo J thought that interpreting s 97(1) as being subject to s 95(1) would render the High Court's jurisdiction under s 97(1) nugatory (see *Christanto* at [7]), I did not think so. As already discussed above, the High Court's jurisdiction under s 97(1) still applies to other situations which are not caught by s 95(1).

146 In so far as Choo J noted that there are a number of provisions in the Extradition Act which allow bail (see *Christanto* at [4] and [11]), this is similar to the Applicant's submission which I have addressed above (at [95]–[97]).

The Minister's statement

147 I come back to the Minister's statement in Parliament in 2012. Both the Applicant and the Respondent proceeded on the basis that I could have regard to that statement to assist me in the interpretation of ss 95(1) and 97(1) CPC 2012 although, as mentioned above, the Respondent sought to confine the Minister's statement to s 95(1)(*a*) only. Choo J also assumed that he could have regard to that statement (see *Christanto* at [8]).

148 Under s 9A(2)(*b*)(i) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act"), consideration may be given to material which does not form part of any written law to ascertain the meaning of a provision of a written law when the provision is ambiguous or obscure. In the light of the definition of "court" in s 2 CPC 2012, I was initially inclined to think that there is no ambiguity or obscurity in s 95(1) or in s 97(1) in so far as the Issue was concerned. However, in the light of *Selvam*, *Hisham* and *Christanto*, I proceeded on the alternative basis that there is ambiguity.

149 Section 9A(3) Interpretation Act sets out the material that may be considered, without limiting the generality of s 9A(2). In particular, s 9A(3) refers to the following material, relevant to this issue, that may be considered:

> …
>
> (*c*) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;
>
> (*d*) any relevant material in any official record of debates in Parliament;

150 Neither the Applicant nor the Respondent mentioned which provision was applicable, if any.

151 Section 9A(3)(*c*) did not seem to be applicable because the Minister's statement was not made on the occasion of the moving of the Bill introducing CPC 2010 but rather of the Bill introducing the 2012 amendments.

152 Section 9A(3)(*d*) could possibly apply since it is not constrained in terms to the reading of the Bill introducing CPC 2010. On the other hand, it could be argued that if consideration is given to the Minister's statement after the fact, then the Minister's statement would amount, however inadvertently, to an *ex post facto* justification of an interpretation that was being favoured. Furthermore, to interpret s 9A(3)(*d*) to allow such a consideration would be to circumvent s 9A(3)(*c*) and has the potential to derogate from the original intentions of Parliament.

153 Likewise, although s 9A(3) is stipulated to be without limiting the generality of s 9A(2), the

above arguments could still apply so that consideration of the Minister's statement would not be permissible in the circumstances.

154 On the other hand, it may seem incongruous that if the purpose of a provision is discussed in Parliament many years later and a purpose, whether old or new, is discussed for justifying the provision, the court may not consider that purpose whether under s 9A(3)(*d*) or 9A(2)(*b*)(i).

155 This is not the only time that a similar question was before our courts. In *Lim Meng Suang v AG* [2013] 3 SLR 118, Quentin Loh J raised the question at [87] but did not furnish an answer as it was not necessary for him to do so. Likewise, it was not necessary for me to come to a view on the question. The Minister's statement did not assist the Applicant much because it did not discuss the interaction between s 97(1) and s 95(1) even though his statement was an unqualified endorsement of *Hisham*.

156 Accordingly, I was still of the view that the Proposition was not correct.

Conclusion

157 In summary, I was of the view that the High Court's power to grant bail in extradition proceedings is circumscribed by s 95(1)(*c*). Even if s 97(1) applies to extradition proceedings, which I doubt, it is still subject to s 95(1)(*c*).

158 However, if s 97(1) does not apply to extradition proceedings, then what happens if a Subordinate Court refuses bail to an extraditable person who applies for bail under s 95(2)(*a*)? Is there an avenue for review (if not for an appeal) to the High Court and, if so, what is the statutory provision which permits such a review, since s 97(1) is inapplicable?

159 The alternative views will be that:

(a) Section 97(1) does apply to extradition proceedings, although s 97(1) is still subject to s 95(1), so as to permit that review, or

(b) Section 95(2)(*a*) does not apply to s 95(1)(*c*) or even to s 95(1)(*b*) as contended by the Respondent.

160 Given the difference of views in *Hisham* and *Christanto* on the one hand and *Selvam* and my decision on the other hand, and in view of further uncertainties mentioned above, I hope Parliament will resolve all these matters clearly, including the meaning of "warrant of extradition" in s 417 and the relationship between ss 418 and 417. At present, it seems that s 418(*a*) applies only to s 417(1)(*a*) and not to s 417(*b*) and (*c*) because s 418(*a*) refers to a person "detained in any prison" and this phrase is found only in s 417(1)(*a*). However, it is possible to contend that s 418(*a*) applies to s 417(1)(*b*) and (*c*) as well because s 418(*a*) refers only to a person "detained in any prison" whereas s 417(1)(*a*) refers to a person "detained in any prison … *on a warrant of extradition*" [emphasis added].

161 It would also be helpful to have clarity as to whether a person who is arrested under a warrant of apprehension under the Extradition Act may apply for bail even before his committal hearing.

If bail is permissible, what factors should apply?

162 It was suggested by the Applicant that even if s 97(1) does not apply to fugitives, s 95 does

not go so far as to expressly take away the High Court's power to grant bail as it is confined to the Subordinate Courts. Accordingly there is a lacuna in the law and the court does have inherent jurisdiction to grant bail. [note: 7] In my view, there is no lacuna for the reasons given.

163 If there was a lacuna, the Respondent accepted that there would be such an inherent jurisdiction but submitted that the jurisdiction should be exercised only if there are special reasons to do so.

164 Assuming that I was wrong and the High Court has power to grant bail in extradition proceedings aside from s 418, whether under s 97(1) CPC 2012 or under its inherent jurisdiction, what factors should apply?

165 Although Choo J referred to Indian and Malaysian cases in *Hisham*, he did not discuss the point that in some of these cases, the court took into account the statutory prohibition against the granting of bail and therefore, while not applying the prohibition to the High Court, the court was of the view that bail should be granted only where there are exceptional and very special reasons (see *Nga San Htwa*, *Re K S Menon* and *Shanmugam*). Indeed, Choo J applied ordinary bail considerations before concluding whether to grant bail or not.

166 I note that Choo J and the Applicant relied on *Sek Kon Kim v Attorney-General* [1984] 1 MLJ 60 ("*Sek Kon Kim*") which set out various factors which a court should consider for bail. However, in *Sek Kon Kim*, the High Court had assumed that it had unfettered discretion to grant bail in extradition proceedings and, having done so, the court then went on to list various factors which it considered for the bail application. There was no discussion as to whether bail should be granted only if there were exceptional and very special reasons to do so.

167 It is not necessary for me to repeat the other foreign cases already discussed above, some of which require special reasons before granting bail in extradition proceedings even in the absence of legislation on the point.

168 Given the prohibition in s 95(1)(*c*), I was of the view that even if the High Court were not fettered by the prohibition, it would be in accordance with the rationale for having that prohibition in the first place to say that bail should be granted only if there was special reason to do so. Otherwise, s 95(1)(*c*) will be otiose. As the Applicant accepted that she had no special reason, I would have dismissed her application on this basis as well.

[note: 1] Applicant's submissions on Bail filed 11/6/2013 at para 2

[note: 2] Reply to Application for Bail dated 11/6/2013 at para 2

[note: 3] Applicant's Further Submissions on Bail ("AFSB") at para 6

[note: 4] AFSB at paras 7 and 84

[note: 5] AFSB at paras 11 and 64

[note: 6] Supplemental Reply to Application for Bail, paras 75-78

[note: 7] AFSB at para 64 and subsequent paras