Tan Seet Eng *v* Attorney-General
[2015] SGHC 18

Case Number : Originating Summons No 772 of 2014

Decision Date : 22 January 2015

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Hamidul Haq, Thong Chee Kun, Istyana Ibrahim and Ho Lifen (Rajah & Tann LLP) for the applicant; Hay Hung Chun, Jeyendran Jeyapal, Kevin Tan and Ailene Chou (Attorney-General's Chambers) for the respondent.

Parties : TAN SEET ENG

Administrative Law – Review of Detention

Administrative Law – Judicial Review – Ambit

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 201 of 2014 and Summons No 263 of 2015 was allowed by the Court of Appeal on 25 November 2015. See [2015] SGCA 59.]

22 January 2015

Tay Yong Kwang J:

Introduction

1 This matter arose out of the detention of the applicant, Tan Seet Eng ("the Applicant"), under s 30 of the Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) ("CLTPA") for allegedly being involved in match-fixing activities globally. In this application, the Applicant prayed for the following orders:

(a) that an Order for Review of Detention ("ORD") be issued forthwith against the Minister for Home Affairs and/or the Superintendent of Institution A3, Cluster A, Changi Prison Complex;

(b) alternatively, that a summons for the ORD be issued; and

(c) in the event that a summons is issued, that the Applicant be brought before the court during the hearing of the application for the ORD.

The Attorney-General ("the AG") opposed the present application.

2 Both parties first appeared before me on 28 October 2014. The hearing could not proceed due to a dispute over some allegations made by the Applicant in his reply affidavit filed on 21 October 2014. I therefore adjourned the hearing and allowed the AG to file further reply affidavits and, if necessary, for the Applicant to file his final reply affidavit thereafter. After the hearing, the AG filed three further affidavits to deal with the Applicant's allegations that he was not asked to make representations to the Criminal Law Advisory Committee (Review) ("CLAR") and that he was not informed of the outcome of the CLAR hearing. No further reply affidavit was filed by the Applicant thereafter. The hearing subsequently took place on 19 November 2014. After hearing the parties, I

dismissed the application. The Applicant has appealed against my decision. I now set out my reasons for dismissing the application.

The facts

The arrest

3 The Applicant was first arrested on 16 September 2013 for allegedly being involved in match-fixing activities globally. On the first day of his arrest, the Applicant gave a statement under s 27 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"). The Applicant alleged that the statement was recorded by ASP Ho Kah King Joseph ("ASP Ho"), an officer from the Commercial Affairs Department ("CAD"). As will be seen subsequently, the Applicant has relied on the fact that the statement was recorded by a CAD officer, and not an officer from the Corrupt Practices Investigation Bureau ("CPIB"), as one of the grounds for establishing procedural impropriety. It was further alleged by the Applicant that ASP Ho continued to record the statement on the second and third days of the Applicant's arrest.

The detention under the CLTPA

4 Within 48 hours of his initial arrest, the Applicant was arrested by ASP Ho under s 44(1) of the CLTPA on 18 September 2013. Following his arrest, the Applicant was detained for a further period of 48 hours under s 44(2) of the CLTPA. On 20 September 2013, before the expiry of the 48-hour period, the Applicant was detained for a further period of 14 days under s 44(3) of the CLTPA. At that point in time, there was an exchange of correspondence between the Applicant's solicitors, Rajah & Tann LLP ("R&T"), and the authorities. The solicitors requested access to the Applicant but their request was turned down by the authorities.

Originating Summons No 913 of 2013

5 On 27 September 2013, an application for an ORD to be issued forthwith, among other things, against the Head of the Criminal Investigation Department was made in Originating Summons No 913 of 2013. This application was subsequently withdrawn on 4 October 2013.

The Minister's order

6 On 2 October 2013, the Minister for Home Affairs ("the Minister") issued and served an order under s 30 of the CLTPA on the Applicant. In that order, the Minister stated that he was satisfied that the Applicant had been associated with activities of a criminal nature and that it was necessary for the Applicant to be detained in the interests of public safety, peace and good order. The period of detention specified in the order was 12 months from the date of the order (*ie*, 2 October 2013). The grounds and particulars relied upon by the authorities are reproduced below:

> (a) You have between 2009 and 2013 been the leader and financer of a global soccer match-fixing syndicate operating from Singapore that carried out soccer match-fixing activities in many parts of the world, the particulars of which are as stated in paragraph (b) below.
>
> (b) Particulars of soccer match-fixing activities:
>
> > (i) You were recruiting runners in Singapore and directing match-fixing agents and runners from Singapore to assist in the conduct of soccer match fixing activities between 2009 and September 2013.

(ii) You were financing and assisting, by providing a contact who could arrange for a corrupt referee, in soccer match-fixing activities in Egypt between September and December 2010.

(iii) You were financing soccer match-fixing activities in South Africa in May 2010.

(iv) You were directing and financing soccer match-fixing activities in Nigeria in June 2011.

(v) You were financing soccer match-fixing activities in Turkey in February 2011.

(vi) You were assisting in attempted soccer match-fixing activities in Trinidad and Tobago in mid-2011 by sending a match-fixing agent to provide support to another match-fixing agent in relation to match-fixing activities.

A copy of the detention order was forwarded to R&T on 4 October 2013. R&T replied on the same day to enquire about the expected date of hearing before the Criminal Law Advisory Committee ("CLAC"). R&T was subsequently informed that the hearing would take place on 17 October 2013.

The CLAC

7 The hearing before the CLAC took place over the course of two days on 17 October 2013 and 5 November 2013. It was undisputed that R&T made submissions on behalf of the Applicant before the CLAC.

8 On 5 November 2013, the CLAC submitted its written report with its recommendations to the President in accordance with s 31(2) of the CLTPA. The President subsequently confirmed the detention order pursuant to s 31(3) of the CLTPA on 7 April 2014. R&T was informed of the President's confirmation by way of a letter dated 8 April 2014.

The present application

9 The present application was commenced on 13 August 2014 under O 54 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("RC"). R&T wrote to the authorities on 23 September 2014 to urge the CLAR to consider releasing the Applicant unconditionally, or in the alternative, to consider substituting the detention order with an order for police supervision. In a reply dated 29 September 2014, R&T was informed that the CLAR had reviewed the Applicant's case in August 2014 and had also submitted its report to the President. The President had considered the Applicant's case, including the report by the CLAR, and on the advice of the Cabinet, extended the detention order for a period of one year with effect from 2 October 2014. R&T was also informed that their letter dated 23 September 2014 would be placed before the CLAR at the next review in August 2015.

10 At this juncture, I note that the Applicant had alleged, in his reply affidavit dated 21 October 2014, that he was not informed of the specific date of the CLAR hearing and was not asked to make representations before the CLAR. The Applicant also alleged that he was not informed of the outcome of the CLAR hearing until he received the letter dated 29 September 2014 from R&T. As discussed earlier (see [2] above), the AG took issue with the Applicant's allegations at the hearing on 28 October 2014 and subsequently filed three affidavits to rebut the Applicant's allegations. A copy of the representations written by the Applicant to the CLAR was exhibited in the affidavits. Apart from that, a written confirmation dated 26 September 2014, in which the Applicant acknowledged receipt of the order extending the period of his detention, was also produced to rebut the Applicant's allegations that he was not informed of the outcome of the CLAR hearing. Nevertheless, counsel for the Applicant, Mr Thong Chee Kun ("Mr Thong"), informed me that the Applicant's case was not based

on those specific allegations. The Applicant also elected not to file a further affidavit to address the documents exhibited in the three reply affidavits. I therefore proceeded on the basis that the Applicant was not relying on those allegations to support his case.

The parties' arguments

The Applicant's arguments

11 At the outset, the Applicant submitted that an objective test, as opposed to a subjective test, was applicable to the present case. In other words, the Minister's and the President's decisions to issue and to confirm the detention order had to be objectively satisfied on reasonable grounds. This was on the basis that there was no ouster clause in the CLTPA. The Applicant relied on the three grounds of review, namely, illegality, irrationality and procedural impropriety.

12 In relation to the issue of illegality, it was submitted that there was no evidence that the Applicant had engaged in criminal activities which affected the interests of public safety, peace and good order in Singapore. The Applicant argued that the evidence, at most, suggested that he had been involved in illegal betting and not match-fixing. It was highlighted that these were distinct offences. The Applicant submitted that in any event, the alleged offence of corruption and match-fixing did not fall within the category of offences contemplated by the CLTPA. It was argued that economic or financial crimes such as corruption did not involve physical violence or harm to society, unlike drug trafficking, illegal moneylending and secret societies.

13 The Applicant also submitted that the Minister and the President did not act in accordance with the purposes of the CLTPA given that the Applicant had already confessed to the offence of illegal betting. It was argued that this went against Parliamentary intent to use the CLTPA only as a last resort when prosecution in court was not possible due to the lack of evidence.

14 The Applicant argued that the CLTPA was never intended to target organised crime or syndicates just because they were such. It was further submitted that the CLTPA was never intended to have extraterritorial reach over criminal activities which had no effect on the interests of public safety, peace and good order in Singapore.

15 With regard to the issue of irrationality, the Applicant submitted that the grounds set out in the detention order were misconceived in so far as the evidence did not suggest any involvement in match-fixing activities. It was submitted that the evidence, at most, revealed involvement in illegal betting activities.

16 Finally, on the issue of procedural impropriety, it was submitted that the Applicant's detention was procedurally improper as his statements were recorded under s 27 of the PCA by ASP Ho who was not an officer from the CPIB. It was argued that these statements were relied upon to justify the Minister's and the President's decisions.

The AG's submissions

17 The AG submitted that the test applicable to cases involving an ORD was different from that applicable to cases involving judicial review. It was argued that an application for an ORD served a different function from judicial review. The AG highlighted that the procedures under O 53 and O 54 of the RC differ accordingly. It was submitted that an application for an ORD is governed by principles set out in the Court of Appeal decision of *Kamal Jit Singh v Minister for Home Affairs and others* [1992] 3 SLR(R) 352 ("*Kamal Jit Singh v MHA*") where it was held that an applicant had to show

probable cause that the detention was unlawful. The AG pointed out that the procedural steps in the CLTPA had been complied with strictly and the Applicant's bare allegations were insufficient to show probable cause that his detention was unlawful.

18 The AG submitted that the application would fail even if the three grounds of review relied upon the Applicant were applicable to the present case. In relation to the ground of illegality, it was argued that Applicant's argument that he was not involved in match-fixing activities was nothing more than a bare assertion and an indirect allegation of bad faith against the Minister and the President. The AG highlighted that the Applicant should not be allowed to hide behind the label of illegality to allege bad faith without particularising his allegation. It was also submitted that the issue of what constitutes "public safety, peace and good order" involved complex, polycentric decisions of government and public policy which were generally not suitable for judicial review. In relation to the Applicant's argument that match-fixing activities fell outside the scope of the CLTPA, the AG pointed out that this issue had already been discussed and defended in Parliament when the CLTPA was extended for another five-year term on 11 November 2013. With regard to the Applicant's argument that the CLTPA was not intended to target match-fixing syndicates, the AG contended that the CLTPA had to evolve to keep pace with new threats in order to remain effective. The fact that the CLTPA had not been used against match-fixing syndicates prior to this was therefore a non-starter. The AG also submitted that the Applicant's argument that there was sufficient evidence to prosecute him in court was unmeritorious and ignored the fundamental difference between the CLTPA and court proceedings.

19 In relation to the ground of irrationality, the AG submitted that questions of public safety, peace and good order fell squarely within the Minister's purview and were not suitable for judicial review. It was further argued that the authorities had particularised the grounds relied upon to support the Applicant's detention. The AG contended that apart from making bare assertions that the grounds were factually untrue, the Applicant had not adduced any evidence to support his case.

20 Finally, with respect to the ground of procedural impropriety, the AG submitted that the Applicant's argument was wholly irrelevant to his detention under the CLTPA. The fact that ASP Ho recorded the Applicant's statements under s 27 of the PCA had no bearing on the procedural fairness or propriety of the detention process set out in the CLTPA. The AG submitted that the procedure in the CLTPA was complied with.

The applicable test

21 The Applicant took the position that the Minister's and the President's decisions to issue and to confirm the detention order could be reviewed on the grounds of illegality, irrationality and procedural impropriety. The AG took the opposing view that the applicable test had already been conclusively determined in the Court of Appeal decision of *Kamal Jit Singh v MHA*, where it was held that the applicant had to show probable cause that the detention was unlawful. The AG further submitted that *Kamal Jit Singh v MHA* was the only decision by the Court of Appeal which dealt with the CLTPA and that the High Court was therefore bound by that decision.

22 In *Kamal Jit Singh v MHA*, the Court of Appeal referred to Wilmot J's opinion to the House of Lords of the English Parliament in 1758 (see Wilmot J, "Opinion on the Writ of Habeas Corpus" (1758) Wilm 77, 97 ER 29), where it was observed that a writ of *habeas corpus* would only be issued on probable cause shown by affidavit. The Court of Appeal then proceeded to make the following observations at [29]–[30]:

> 29 We are of the view that the reasons continue to remain valid today and are as applicable to a case of preventive detention as they were to the examples cited by Wilmot J.

> 30 An application for a writ of *habeas corpus* is, on the other hand, different from an application for *mandamus*, prohibition or *certiorari* that under O 53 of the [RC] in the sense that the court has no discretion to refuse the writ once probable cause is shown. ...

On the facts of that case, it was held that the Applicant's affidavit showed that the provisions of the CLTPA were complied with and no objection was made to the propriety or correctness of the detention order. The facts adduced demonstrated that there were "some objective grounds" for ordering the initial and continued detention of the appellant. On that basis, the applicant's case could not succeed as he had not shown probable cause that the detention was unlawful.

23 It is useful to refer also to the earlier Court of Appeal decision of *Chng Suan Tze v Minister for Home Affairs and others and other appeals* [1988] 2 SLR(R) 525 ("*Chng Suan Tze v MHA*"). The Court of Appeal accepted the proposition that in *habeas corpus* proceedings, the burden in the first instance was on the detaining authority to justify the legality of the detention. On the facts of that case, the Court of Appeal held that the detaining authority had not discharged the burden of proving the legality or validity of the detention orders due to the failure to adduce evidence of the President's satisfaction. The appeals were therefore allowed and the appellants were ordered to be discharged from custody.

24 More significantly, the Court of Appeal also rejected the subjective discretion test in the Federal Court of Malaysia's decision of *Karam Singh v Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia* [1969] 2 MLJ 129. It was opined that the objective test was applicable to the review of the exercise of discretion under ss 8 and 10 of the Internal Security Act (Cap 143, 1985 Rev Ed) ("ISA"). The Court of Appeal further observed that the function of a court in the review of discretionary power depended on whether a jurisdictional or precedent fact was involved. After arriving at the view that the exercise of discretion under ss 8 and 10 of the ISA fell outside the "precedent fact category", the Court of Appeal made the following observations at [119] on the scope of review applicable to the ISA:

> In the circumstances, it is in our judgment clear that the scope of review of the exercise of discretion under ss 8 and 10 of the ISA is limited to the normal judicial review principles of "illegality, irrationality or procedural impropriety" ...

25 Some observations may be made on the two decisions discussed above. First, the decision in *Chng Suan Tze v MHA* was legislatively overruled by way of amendments made to the ISA and the Constitution. The effect of those amendments in ousting the jurisdiction of the courts was confirmed in the subsequent Court of Appeal decision of *Teo Soh Lung v Minister for Home Affairs and others* [1990] 1 SLR(R) 347. However, the legislative amendments were directed primarily at the ISA. On that basis, given that no ouster clause exists in the CLTPA, it may be argued that the Court of Appeal's observations in *Chng Suan Tze v MHA* on the applicable scope of review are still relevant to challenges made against detention orders granted under the CLTPA. The Court of Appeal, in holding that the three grounds of review in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 ("the *GCHQ* case") were applicable, was in fact dealing with an application for a writ of *habeas corpus*. In any event, both the ISA and the CLTPA provide for detention and the primary difference between the statutes is the subject matter. The ISA deals primarily with issues concerning national security while the CLTPA addresses issues relating to public safety, peace and good order. In the circumstances, given that the CLTPA does not oust the jurisdiction of the courts, there is no reason why the three grounds of illegality, irrationality and procedural impropriety should not be applicable to challenges made against detention orders under the CLTPA.

26 Further support for such a proposition can also be found in the subsequent High Court decision

of *Re Wong Sin Yee* [2007] 4 SLR(R) 676 ("*Re Wong Sin Yee*") where the applicant there challenged his detention under the CLTPA. The application for review of the detention was also made pursuant to O 54 of the RC. Tan Lee Meng J proceeded on the basis that the scope of review of the detention order extended to the three grounds set out in the *GCHQ* case. This is consistent with the Court of Appeal's observations in *Chng Suan Tze v MHA*. In fact, one of the decisions cited in *Re Wong Sin Yee* was the other Court of Appeal decision of *Kamal Jit Singh v MHA*. Tan J did not, however, apply the probable cause test as set out in that case.

27 Second, in relation to the burden of proof applicable to such challenges, the Court of Appeal in *Chng Suan Tze v MHA* stated unequivocally that:

> ... the burden of proof is in the first instance on the detaining authority to justify the detention. *The principle cannot be disputed. It has been applied in all the cases*. In our opinion, this burden of proof is discharged by evidence that the President, acting in accordance with advice of the Cabinet or the authorised Minister, is satisfied, and the production of the detention order. ... However, there is no jurisdictional fact to the President's satisfaction which is thus reviewable only on *GCHQ* grounds. *In our judgment, where the appellants challenge the President's satisfaction on these grounds* [*ie*, the three grounds of illegality, irrationality and procedural impropriety], *the burden of proof is on them*.
>
> [emphasis added]

28 The position therefore is that the applicant must establish probable cause that the detention was unlawful on the grounds of illegality, irrationality or procedural impropriety while the detaining authority has to show that the detention order was properly made in that all procedural requirements had been complied with.

The decision

29 On the facts of the present case, the AG has produced evidence to establish the validity of the detention order made against the Applicant in that the requisite procedural steps were complied with. The Applicant therefore bears the burden of establishing that the detention was illegal, irrational or procedurally improper.

Illegality

30 The Applicant's primary objection under the ground of illegality is that the activities undertaken by the Applicant did not fall within the category of offences contemplated by the CLTPA. I was unable to accept the Applicant's arguments for the following reasons.

31 First, s 30 of the CLTPA does not specify any particular category of criminal activity for which an order for detention may be made. The relevant portions of s 30 are reproduced as follow:

> Whenever the Minister is satisfied with respect to any person, whether the person is at large or in custody, that the person has been associated with *activities of a criminal nature*, the Minister may, with the consent of the Public Prosecutor —
>
> > (*a*) if he is satisfied that it is necessary that the person be detained *in the interests of public safety, peace and good order*, by order under his hand direct that the person be detained for any period not exceeding 12 months from the date of the order ...

[emphasis added]

The three requirements for the invocation of s 30 of the CLTPA are the Minister being satisfied that the subject person has been "associated with activities of a criminal nature", the Minister being satisfied that it is necessary for that person to be detained in the interests of "public safety, peace and good order" and the consent of the Public Prosecutor. The words of the provision do not restrict the scope of the CLTPA to specific categories of criminal activity. A distinction has to be drawn between penal provisions and provisions which allow for preventive detention, such as s 30 of the CLTPA. While penal provisions are concerned with punishing specific past criminal acts, the focus of provisions dealing with preventive detention, as in the case of s 30 of the CLTPA, is on the risk that the person poses to society. The Applicant has accepted at least that he was associated with activities of a criminal nature, although he disputed the particular criminal activities alleged against him.

32 Second, while the Applicant relied on the fact that the CLTPA has only been invoked against secret societies, drug trafficking and illegal moneylending syndicates, that did not necessarily lead to the conclusion that the scope of the CLTPA was confined to such criminal activities. It was not disputed that the CLTPA was initially conceptualised for the purpose of dealing with the scourge of secret societies, which was a major problem in Singapore during the 1950s. Nevertheless, the CLTPA has also been invoked against drug trafficking and illegal moneylending syndicates over the years. Therefore, the fact that this may be the first time that the CLTPA has been invoked against match-fixing activities did not mean that the CLTPA was utilised outside its intended purpose. Further types of criminal activities, whether already known or which may emerge in future, may legitimately come within the scope of the CLTPA as time passes and society evolves.

33 The Applicant also referred to statements made in Parliament indicating that the "key targets" of the CLTPA were secret societies and drug syndicates. However, these statements only meant that the CLTPA has primarily been invoked against such targets and could not be taken to mean that the scope of the CLTPA was restricted to the named criminal activities.

34 The Applicant also relied on such statements in Parliament to further argue that the CLTPA should only be invoked against offences which cause "physical violence or harm to society". In support of this, the Applicant attempted to draw an analogy between corruption-related offences and the offences of insider trading or market manipulation by submitting as follows:

> This is because, serious as the offence may be, the offence of insider trading or market manipulation cannot be said to affect public safety, peace and good order, for the purposes of the CLTPA. Likewise, the perpetrator's conduct in committing match-fixing (or corruption) per se does not affect the public safety, peace or good order of Singapore society in the same way that secret society activities, drug trafficking and unlicensed money-lending activities result in *chaos, violence or widespread harm*. There is no threat to *life, limb or security*.
>
> [emphasis added]

35 As mentioned earlier, s 30 of the CLTPA may be invoked if the Minister is satisfied that it is necessary for the person to be detained in the interests of "public safety, peace and good order". There is no reference to any requirement for physical violence. The Applicant's argument that the CLTPA should only be restricted to activities which result in "chaos, violence or widespread harm" was clearly not supported by the express words of the provision. It was also submitted that match-fixing activities affected only sporting integrity and the interests of gamblers. "Public safety, peace and good order", however, are words that are capable of encompassing a wide range of situations. It may

be reasonably argued, in particular, that "good order" dictates that participants in soccer, a sport which undoubtedly commands world-wide interest regardless of age or gender, play to win and not according to the source or the size of bribes.

36 Another ground that was canvassed by the Applicant was his assertion that there was no evidence to suggest that he was involved in match-fixing activities. The scope of review in this case is limited to the three grounds of illegality, irrationality and procedural impropriety. A distinction has to be drawn between a review, as in the present case, and an appeal. The Applicant's argument was directed at the sufficiency of evidence and that clearly was beyond the scope of what judicial review entails in respect of the CLTPA. Moreover, the detaining authority has set out the grounds and particulars relied upon to support the detention order issued against the Applicant.

37 The Applicant's other main argument under the ground of illegality was in relation to the assertion that the CLTPA should only be invoked as a last resort when prosecution was not possible due to the lack of evidence. It was further submitted that there was sufficient evidence to charge the Applicant in court for offences such as illegal betting. On that basis, the Applicant argued that the Minister and the President did not exercise their powers in accordance with the purposes of the CLTPA.

38 A similar line of argument was made by the applicant in *Kamal Jit Singh v MHA*. In that case, the applicant argued that it was not right for him to be denied a trial when other warders arrested for drug trafficking had been charged in open court. The Court of Appeal rejected the argument and made the following observations at [35]:

> ... This submission ignored the fundamental distinction between preventive detention and criminal proceedings which has been considered above. The authorities cited above show that it is *no ground for complaint that a person is detained rather than charged in open court*.
>
> [emphasis added]

39 In *Re Wong Sin Yee*, the applicant highlighted that the Government had stressed on a number of occasions that the main reason for preventive detention was the inability of the authorities to secure the testimony of witnesses and accomplices for a trial. It was further argued that on the facts of that case, the testimony of witnesses could be procured without difficulty. This argument was rejected on the basis that the Court of Appeal decision of *Kamal Jit Singh v MHA* was binding on the High Court. Tan J further observed that it was not within the province of the court to determine whether a detainee ought to be tried rather than be detained.

40 Taking into account the principles set out above, the Applicant's argument that there was sufficient evidence for him to be prosecuted in court was devoid of merit. In any event, the Applicant's argument was confined to the assertion that there was sufficient evidence for him to be charged with illegal betting. This should be contrasted with the grounds relied upon by the authorities for detaining the Applicant. It was stated that the Applicant was involved in match-fixing activities globally. The fact that there was sufficient evidence to prosecute the detainee for a lesser or another offence did not mean that the CLTPA could not be invoked to address other criminal activities that the detainee was involved in. The purpose of preventive detention is different from that in a typical criminal prosecution, as was observed by the Court of Appeal in *Kamal Jit Singh v MHA* at [20]:

> ... The detention is therefore *not punitive* in the sense of being for the purpose of punishing a past act of the detainee, but *preventive* in the larger interests of society. ...

[emphasis added]

41 I was also not able to accept the Applicant's assertion that the court proceedings commenced against him in Italy and Hungary would "make spurious any claims that it is necessary to resort to the CLTPA in this case". The availability of evidence and witness testimony to support prosecution may vary across different jurisdictions. The compellability of foreign witnesses to support a prosecution in Singapore is also an issue which is likely to arise. The fact that prosecution is viable in one jurisdiction does not necessarily lead to the conclusion that a successful prosecution could also be conducted in another jurisdiction. The ongoing court proceedings in Italy and Hungary were therefore not conclusive on the issue of whether successful prosecution could be conducted in Singapore. It should also be remembered that the detention order in this case was made with the consent of the Public Prosecutor, the holder of the high office responsible for all prosecution in Singapore.

42 The Applicant also argued that the CLTPA was not intended to target organised crime or criminal syndicates just because they were such. It was submitted that s 30 of the CLTPA would only apply to syndicates which affected the interests of public safety, peace and good order. The Applicant also highlighted that Parliament had considered introducing a new statute, referred to as the Organised Crime Act, to deal specifically with organised crime. On this basis, it was submitted that the CLTPA was never meant to address all types of organised crime in Singapore.

43 I have already stated that the scope of "public safety, peace and good order" is quite wide. It was also not disputed by the parties that the Organised Crime Act has not been passed by Parliament. Therefore, any arguments on the scope of such a statute and the effect, if any, it would have on the CLTPA remain purely speculative.

44 Finally, the Applicant submitted that in the absence of any express provisions in the CLTPA conferring extraterritorial jurisdiction, invoking the CLTPA for alleged offences of corruption committed overseas that had no impact on Singapore was illegal. There were therefore two aspects to the Applicant's arguments. First, the alleged criminal activity took place outside Singapore. Second, the alleged criminal activity had no impact on the public safety, peace and good order in Singapore.

45 The issue of whether the CLTPA could be invoked against criminal activity outside Singapore was considered in the High Court decision of *Re Wong Sin Yee*. In that case, Tan J rejected the argument that s 30 of the CLTPA did not authorise the detention of a person for criminal activities outside Singapore. It was observed that otherwise, a person who was believed to be a threat to public safety, peace and good order in Singapore because of his criminal activities abroad would have to be given some time to become involved in criminal activities in Singapore before he could be detained under s 30 of the CLTPA. I agree with Tan J's observations. There is no reason to confine s 30 of the CLTPA to criminal activity occurring within Singapore. The focus of the provision is on the risk the detainee poses to the public safety, peace and good order in Singapore and not whether the criminal activity occurred within Singapore.

46 In any case, the grounds for detaining the Applicant were not confined to activities outside Singapore. He was said to be the leader and financer of a global soccer match-fixing syndicate operating from Singapore and was involved in various supporting activities here (see [6] above).

47 With regard to the second aspect, the authorities have already set out the grounds and particulars in support of the decision that it was necessary for the Applicant to be detained in the interests of public safety, peace and good order. The Applicant has not shown that the criminal activities he was allegedly involved in could have no impact or had no impact at all on the public safety, peace and good order in Singapore. Again I emphasise that these words in the CLTPA have a

wide scope and it was for the Minister to be satisfied that detention was necessary. It could not be argued that there was no material at all for the Minister to have come to his conclusion that detention was necessary in the circumstances.

Irrationality

48 Under the head of irrationality, the Applicant argued that the grounds set out in the detention order issued by the Minister were misconceived. In support of this argument, the Applicant raised a number of objections in respect of the evidence supposedly relied upon to arrive at the decision to detain him under s 30 of the CLTPA. As emphasised above, judicial review does not entail the court looking into whether there exists sufficient evidence to support the detention of the Applicant. The threshold for intervention under the ground of irrationality is relatively high. As Lord Diplock had observed in the *GCHQ* case (at 410), it applies only to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

49 Taking into account the totality of the evidence before me, I was not satisfied that this threshold has been met. In fact, the Applicant has, in his written submissions, acknowledged that he had, on multiple occasions, extended loans to third parties and received betting tips in return. With regard to his involvement, the Applicant gave the following evidence in his affidavit:

> When I was with Exclusive Sports, Raj asked me for loans on behalf of the company for business purposes. He did not tell me the exact nature of the business and I did not ask. I acceded to his request on a number of occasions. Each time I gave such loans, he told me to place certain specific bets for both of us. I did as I was told and mostly won money. I suspected that he was doing something illegal with the money, but I did not ask him. I did not bother asking him since I left Exclusive Sports in a few months after falling out with him. He has held a grudge against me ever since I pulled out of Exclusive Sports.

50 As in the case of *Kamal Jit Singh v MHA*, the facts adduced showed that there were at least some objective grounds for ordering the initial and continued detention of the Applicant. The evidence given by the Applicant suggested that he had at least some involvement in the criminal activities relied upon by the authorities for the Applicant's detention under the CLTPA. In the light of the foregoing, the decision to detain the Applicant under s 30 of the CLTPA cannot be said to be a decision which was so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

Procedural impropriety

51 The final ground of review relied upon by the Applicant was that of procedural impropriety. As Mr Thong clarified at the hearing on 19 November 2014, the Applicant's only objection was in relation to the recording of the statement under s 27 of the PCA by ASP Ho, who was an officer from the CAD and not the CPIB.

52 There was nothing in the CLTPA to suggest that the Minister, the CLAC or even the President, in exercising their respective functions under the CLTPA, had to take into account only evidence that was admissible in a court of law. In fact, one of the reasons for having detention laws was the recognition that the evidence collected by the authorities may not be admissible in a court of law. The decision-makers under the CLTPA were not constrained by the rules of admissibility in the law relating to evidence. Therefore, the fact that the statement may have been recorded by a wrong officer would not result in it being excluded from being taken into account by the Minister, the CLAC

or the President.

53 This point is reinforced in r 13 of the Criminal Law (Advisory Committees) Rules (Cap 67, R 1, 1990 Rev Ed), which states as follows:

> **Evidence**
>
> **13**. An advisory committee may in its discretion hear any witness and may admit or reject any evidence adduced, whether oral or documentary and *whether admissible or inadmissible under any written law for the time being in force relating to the admissibility of evidence*.
>
> [emphasis added]

Accordingly, the Applicant's challenge on the ground of procedural impropriety failed.

Conclusion

54 For the reasons set out above, the Applicant has not shown probable cause that the detention was unlawful. I therefore dismissed the application and ordered the Applicant to pay the AG costs which I fixed at $8,500, inclusive of disbursements.