IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 289

Criminal Revision No 6 of 2023

Between

Vang Shuiming

… *Applicant*

And

Public Prosecutor

… *Respondent*

EX TEMPORE JUDGMENT

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

Vang Shuiming
v
Public Prosecutor

[2023] SGHC 289

General Division of the High Court — Criminal Revision No 6 of 2023
Vincent Hoong J
12 October 2023

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Vincent Hoong J (delivering the judgment of the court *ex tempore*):

Introduction

1 Mr Vang Shuiming ("the Applicant") presently faces the following five charges: one charge under s 471 and punishable under s 465 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and four charges under s 54(1)(*c*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed) ("CDSA"). The Applicant has been in remand since his arrest on 15 August 2023. At a bail review hearing on 29 September 2023 in a District Court, the Applicant was denied bail.

2 In Criminal Revision No 6 of 2023, the Applicant prays for the High Court to exercise its revisionary powers under s 401 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") and revoke the District Court's order denying him bail, and to grant him bail.

Background facts

3 The Applicant was arrested on 15 August 2023 as part of an investigation into money-laundering and forgery offences. Between 16 August 2023 and 6 September 2023, the Applicant was remanded for investigations by orders of a District Court under s 238(3) of the CPC. Each order resulted in the Applicant being remanded for a period of eight days at a time.

4 On 29 August 2023, the Applicant filed Criminal Revision No 4 of 2023 ("CR 4"), praying, *inter alia*, for the High Court to exercise its revisionary powers under s 401 of the CPC to revoke the District Court's orders of 23 August 2023 and 30 August 2023 which led to him being further remanded for investigations.

5 On 5 September 2023, I dismissed CR 4. My reasons for dismissing CR 4 can be found in *Vang Shuiming v Public Prosecutor* [2023] SGHC 248 ("*Vang Shuiming (No 1)*"). Briefly, I found that the District Court's orders were not palpably wrong such that there was serious injustice which warranted the exercise of the High Court's powers to revoke the said orders of remand and substitute the orders with an order that the Applicant be granted bail.

6 Thereafter, at a hearing in a District Court on 6 September 2023, the Prosecution stated that it was not seeking a further remand of the Applicant for investigations. Instead, the Prosecution sought for bail to be refused to the Applicant. In support of its position, the Prosecution relied on an affidavit of the lead investigator, Mr Teh Yee Liang ("Mr Teh"), dated 5 September 2023. At the hearing, counsel for the Applicant stated that time was required to take instructions from the Applicant and have an affidavit by the Applicant filed in

order to make full arguments on the issue of bail. Given this position, in the interim, the District Court refused to grant the Applicant bail at the hearing on 6 September 2023.

7 A bail review hearing was subsequently fixed on 29 September 2023 in a District Court. The Applicant requested bail to be granted to him and filed an affidavit dated 20 September 2023 in support of his request. A further affidavit of the lead investigator, Mr Teh, dated 25 September 2023 was filed by the Prosecution to respond to the points made by the Applicant in his affidavit. After considering parties' submissions, the District Judge ("DJ") denied the Applicant bail at the hearing on 29 September 2023.

8 The applicant is dissatisfied with the DJ's decision to deny the Applicant bail at the bail review hearing on 29 September 2023. He prays for the High Court to exercise its revisionary powers under s 401 of the CPC to revoke the DJ's order denying him bail, and to exercise its powers to grant him bail.

The applicable law

9 The general principles governing the exercise of the High Court's revisionary powers are trite. In *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929, Yong Pung How CJ (as he then was) stated at [17] that:

> Thus various phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common denominator that there must be some serious injustice. Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. But generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below.

10 Similarly, Yong CJ stated in *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196 at [19] that:

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

11 Specifically in the context of an application seeking the High Court's exercise of its revisionary jurisdiction to grant bail where bail has been refused in the court below, Sundaresh Menon CJ stated in *Muhammad Feroz Khan bin Abdul Kader v Public Prosecutor* [2022] SGHC 287 ("*Muhammad Feroz Khan*") (at [18]) that the High Court would exercise its revisionary jurisdiction to grant bail only where it is satisfied that the decision of the court below would give rise to a serious injustice.

My decision

12 Having considered the Applicant's arguments as well as the Prosecution's submissions, I do not find that the threshold of serious injustice has been met such that the court should exercise its revisionary jurisdiction to grant bail. I consider each of the Applicant's arguments below and explain why I am unable to agree with the Applicant's arguments.

The Applicant's argument that the DJ erred in finding that the Applicant was a flight risk based on the Prosecution's bare assertions

13 First, the Applicant argues that the DJ erred in relying on the Prosecution's bare assertions in support of its position that the Applicant was a

flight risk.[1] The Applicant states that the Prosecution relied on and continues to rely on affidavits of Mr Teh which contain bare assertions without any corroborative evidence. While the Applicant accepts that the standard of proof in bail review proceedings may be lower than the standard of proof required in a trial given the interlocutory nature of bail proceedings,[2] the Applicant contends that this does not allow the court to merely rely on bare assertions without any corroborative evidence.[3]

14 The Applicant highlights a few examples of the bare assertions purportedly made by the Prosecution which he claims are vague, incomplete or illogical. I summarise these below:

(a) The Applicant states that the Prosecution's assertion that he faces charges for "serious offences" only focuses on the maximum sentence which may be imposed under each of the CDSA charges.[4] The Applicant contends that it is equally possible for fines to be imposed in respect of the CDSA charges. On this basis, by only focusing on the maximum sentence which may be imposed and failing to consider the "relatively low amounts of money"[5] that are alleged to be criminal proceeds and the extent of loss caused to the alleged victims, the Applicant argues that the Prosecution's assertion is not one which should be accepted.

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1 Applicant's Skeletal Submissions dated 11 October 2023 ("AS") at paras 27 to 32.

2 AS at paras 12 to 14.2

3 AS at para 16.

4 Applicant's Affidavit dated 6 October 2023 ("Applicant's Affidavit") at para 15.

5 Applicant's Affidavit at para 15(c).

(b) The Applicant states that the Prosecution's assertion that there is credible evidence that he committed the offences is not supported by anything other than Mr Teh's claim about the existence of evidence in his affidavit. Conversely, the Applicant states that the onus is not on him to raise evidence to prove his innocence of the charges.[6]

(c) The Applicant states that the Prosecution's claim that the Applicant is wanted by the Chinese authorities for *illegal online gambling activities* has little to do with the CDSA charges he faces, given that the CDSA charges allege that the Applicant was carrying on a business of *unlicensed moneylending* in China. Further, the Applicant argues that there is no corroborative evidence showing that he is wanted by the Chinese authorities.[7]

15 I am unable to agree with the Applicant's argument on this issue for the following reasons:

(a) First, counsel for the Applicant acknowledges that bail review proceedings are interlocutory in nature, and that the strict rules of evidence therefore do not apply.[8] As I had previously stated in *Vang Shuiming (No 1)* (at [12]), the Court of Appeal made clear in *Public Prosecutor v Sollihin bin Anhar* [2015] 3 SLR 447 (at [38]) that affidavit evidence is frequently relied upon in applications regarding the granting or revocation of bail which are meant to be dealt with in a summary way. This is precisely the type of evidence which the Prosecution is relying on, being the evidence of the lead investigator, Mr Teh. While the

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6 Applicant's Affidavit at para 16.

7 Applicant's Affidavit at para 17.

8 AS at paras 12 to 14.

Applicant argues that the Prosecution must further produce *corroborative evidence* beyond the affidavit evidence of Mr Teh, this appears to be an unduly onerous obligation which is unsupported by the precedents cited by the Applicant.

(b) Second, and more crucially, I fail to see how the assertions of the Prosecution can be said to be bare assertions. Let me explain:

(i) It is undeniable that the Applicant faces charges which relate to "serious offences". While the Applicant seeks to highlight that fines could possibly be imposed for the CDSA charges he faces, as has been correctly noted by the Prosecution, it is trite that the statutory maximum sentence signals the gravity with which Parliament views any individual offence: see *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [60].[9] While I agree that a charge under the CDSA can capture a wide range of offences of differing severity, it bears noting that the four CDSA charges here relate to large sums totalling more than $2.4 million.[10] While the Applicant views the sums as "relatively low amounts",[11] it is clear to me that the total sum of $2.4 million can hardly be said to be low.

(ii) The Applicant states that the Prosecution's claims that there is credible evidence against the Applicant and that the Applicant is wanted by the Chinese authorities are bare

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9 Prosecution's Submissions dated 11 October 2023 ("PS") at para 30.

10 PS at paras 28 to 29; Prosecution's Bundle of Documents dated 11 October 2023 ("PBOD") at Tab 1: Affidavit of Mr Teh Yee Liang dated 5 September 2023 ("Teh's 5 September Affidavit"), Exhibit TYL-2.

11 Applicant's Affidavit at para 15(c).

assertions which are unsupported by corroborative evidence.[12] However, I accept the Prosecution's position that the affidavit evidence of Mr Teh is based on his investigative findings thus far, and that he is ultimately constrained by the fact that investigations are ongoing.[13] In my view, this is an entirely reasonable position at this stage of the proceedings.

(c) Third, it is important to recognise that of the five charges the Applicant faces, four of the charges relate to non-bailable offences under the CDSA. Bail is, therefore, not available to the Applicant as of right. Instead, the onus is on the Applicant to show that bail ought to be granted to him: see *Public Prosecutor v Yang Yin* [2015] 2 SLR 78 ("*Yang Yin*") at [29]. However, as the Prosecution has highlighted,[14] instead of responding to or substantively rebutting the assertions of Mr Teh or the Prosecution in support of its position the Applicant was a flight risk, the Applicant has chosen to take the position that it is not for him to raise "counter-evidence to prove [his] innocence of the charges".[15] This, to me, is wholly unsatisfactory. Where the onus is on the Applicant to show that bail ought to be granted to him, it is incumbent on the Applicant to substantively rebut the assertions of the Prosecution based on the affidavit evidence of Mr Teh, as opposed to simply contending that they are bare assertions.

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12 Applicant's Affidavit at paras 16 to 17.

13 PS at para 25.

14 PS at paras 21 to 24.

15 Applicant's Affidavit at para 16(c).

The Applicant's argument that the DJ erred to consider the points made by the Applicant on why bail should be granted

16 Next, the Applicant argues that the DJ failed to meaningfully consider the following points which he made before the DJ and which he similarly emphasises in this application:

(a) The Applicant has deep roots in Singapore, given that his entire family resides in Singapore. In fact, his family members are also willing to surrender their passports if necessary to satisfy any concern that the Applicant may abscond.[16]

(b) The Applicant is willing to be subject to highly restrictive conditions of bail. In particular, the Applicant states that he is willing to be subject to electronic tagging and is willing for his name to be placed on the blacklist or watchlist of the Immigration and Checkpoints Authority ("ICA").[17]

The Applicant's claim that he has deep roots in Singapore and is not a flight risk

17 In my view, the Applicant's claim that he has *deep roots* in Singapore is a mischaracterisation of the facts. As has been made clear in Mr Teh's affidavit dated 25 September 2023, the Applicant and his family have only been residing in Singapore since 2019.[18] The Applicant is neither a Singapore citizen nor a Permanent Resident. Any claim that the Applicant has roots in Singapore must be contrasted against the significant flight risk presented by the fact that he holds

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16 AS at para 33(a).

17 AS at paras 33(b) and (c).

18 PBOD at Tab 3: Affidavit of Mr Teh Yee Liang dated 25 September 2023 ("Teh's 25 September Affidavit") at para 10.

multiple passports issued by Turkey, China and Vanuatu.[19] While these have been seized by the authorities, I note that is undisputed that the Applicant has a Cambodian passport, though the location of this passport remains unknown.[20]

18 Further, the Applicant himself acknowledges that he was able to obtain the various passports on the basis of donations and financial contributions he had made. In my view, this amplifies the risk of the Applicant being able to abscond, whether by using the Cambodian passport which is currently not in the possession of the authorities or by procuring a new passport through similar methods. As has been highlighted by the Prosecution, the Applicant has significant assets outside of Singapore which are not the subject of seizure or prohibition orders.[21] Coupled with this is the investigative finding that there has been movement of substantial cryptocurrency assets belonging to the Applicant *after his arrest*.[22] In my view, these raise real concerns that the Applicant may have connections and assets which may allow him to abscond easily.

19 Therefore, I am unable to accept the Applicant's claim that he has deep roots in Singapore and is not a flight risk.

The Applicant's argument that he is willing to be subject to highly restrictive bail conditions

20 Next, the Applicant argues that he is willing to be subject to electronic tagging and to be placed on the ICA's watchlist or blacklist. In this application,

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19 PBOD at Tab 1: Teh's 5 September Affidavit at para 20.

20 PBOD at Tab 1: Teh's 5 September Affidavit at para 21; PBOD at Tab 3: Teh's 25 September Affidavit at para 23.

21 PS at para 43; PBOD at Tab 1: Teh's 5 September Affidavit at paras 22 to 23; PBOD at Tab 3: Teh's 25 September Affidavit at para 25.

22 PS at para 43; PBOD at Tab 1, para 29.

the Applicant has also stated that he is willing to be subject to 24-hour closed-circuit television surveillance if necessary.[23] However, as the Prosecution has correctly highlighted, these measures are not infallible.[24]

21 In my view, the measures proposed by the Applicant also do not satisfactorily address the significant flight risk posed by the Applicant in this case, given his significant assets outside of jurisdiction, his multiple passports as well as the concerning investigative finding of the movement of substantial cryptocurrency assets belonging to the Applicant after his arrest. Therefore, I am unable to accept that the DJ erred in refusing to grant the Applicant bail despite his willingness to be subject to restrictions.

The Applicant's argument that the DJ erred in considering that there was a risk of collusion in deciding whether to grant bail

22 Next, the Applicant argues that the DJ incorrectly considered that there was a risk of collusion in deciding to deny the Applicant bail. Here, the Applicant makes two arguments: (a) that the risk of collusion is an irrelevant consideration in determining whether bail ought to be granted as the purpose of bail is to secure the Applicant's attendance;[25] and (b) that the Prosecution's assertions of a risk of collusion are overstated and vague, since they have only claimed that there are connections between the Applicant and other individuals but no other individual has been named in the Applicant's charges as a co-accused or co-conspirator.[26]

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23 Applicant's Affidavit at para 19.

24 PS at para 46.

25 AS at paras 44 to 45.

26 Applicant's Affidavit at paras 26 to 27.

Whether the risk of collusion is a relevant consideration in determining if bail ought to be granted

23 I first note that counsel for the Applicant recognises that the precedents do suggest that, in determining whether bail ought to be granted, the court should consider whether there is a risk of collusion or witness tampering.[27]

24 Indeed, it is clear from the jurisprudence that the risk of collusion is undeniably a relevant factor in determining whether bail ought to be granted. In *Yang Yin* (at [44(g)]), Menon CJ explicitly set out that the danger of witnesses being tampered with is a relevant consideration in determining whether to grant bail. As counsel for the Applicant points out, in *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 (at [54]), the High Court similarly pointed out that bail should not be granted where it is likely that an accused person "would seek to use his liberty to intimidate witnesses or tamper with evidence".

25 Despite the clear jurisprudence, counsel for the Applicant states that the consideration of a risk of collusion does not sit well with the statutory regime for the granting of bail. Here, the Applicant points to s 95(1)(*b*) of the CPC as well as Rule 5 of the Criminal Procedure Rules 2018 ("CPR") to suggest that the only consideration when determining whether bail should be granted is whether an accused person, if released, would surrender to custody, be available for investigations or attend court.[28]

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27 AS at para 39.

28 AS at paras 40 to 44.

26 In my view, however, such a view fails to appreciate the precise language of s 95(1)(*b*) of the CPC. I set out s 95(1) of the CPC in full below:

> 95.—(1) An accused must not be released on bail or on personal bond if —
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> (a) the accused is charged for an offence punishable with death or imprisonment for life;
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> (b) the accused is accused of any non-bailable offence, and the court believes, on any ground prescribed in the Criminal Procedure Rules, that the accused, if released, will not surrender to custody, be available for investigations or attend court; or
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> (c) the accused has been arrested or taken into custody under a warrant issued under section 12 or 34 of the Extradition Act 1968 or endorsed under section 33 of that Act.

27 It is clear from a plain reading that s 95(1) of the CPC only sets out certain situations when an accused person *must not* be released on bail. Indeed, where an accused person is charged for a non-bailable offence and the court believes, on any ground prescribed in Rule 5 of the CPR, that the accused person may not surrender to custody, be available for investigations or attend court, the court must not allow the accused person to be released on bail. However, nowhere in s 95(1) of the CPC does it state that these are the *only* occasions where the court *may* refuse to grant bail. Neither is there anything in s 95(1) of the CPC which restricts the court from considering any risk of collusion in deciding whether to grant bail.

28 Therefore, there is simply nothing to support the argument that the consideration of a risk of collusion does not sit well with the statutory regime for the granting of bail.

Whether the Prosecution's assertions of a risk of collusion are overstated and vague

29 In the present case, the Prosecution has relied on the affidavit evidence of Mr Teh in support of its position that there is a close association between the Applicant and two other accused persons in the broader money-laundering investigations. Further, the Applicant also has connections to various individuals who are wanted by the police and remain outside of jurisdiction.[29] The Prosecution also states that there is reason to believe that the Applicant is involved with one of these individuals, who is referred to as "Suspect X", in a common criminal enterprise.[30]

30 In my view, the affidavit evidence clearly shows that there is a risk of collusion. While the Applicant contends that the Prosecution's assertions are overstated and vague because there are no co-accused persons named in the Applicant's charges and the Prosecution has not disclosed the names of the individuals the Applicant is stated to have connections with, this fails to appreciate that the broader investigations are *ongoing*. In light of the ongoing investigations, it would be reasonable for the Prosecution to withhold certain sensitive information at this stage since this could impede their investigations. I, therefore, do not accept the Applicant's contention that the Prosecution's assertions of a risk of collusion are overstated and vague.

Conclusion

31 For the reasons above, I do not find that there was anything palpably wrong in the order made by the DJ such that serious injustice has been caused

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29 PBOD at Tab 1: Teh's 5 September Affidavit at paras 27 to 28.

30 PBOD at Tab 1: Teh's 5 September Affidavit at paras 24 to 25.

as a result of the Applicant being denied bail. As I have explained above, the arguments made by the Applicant before the DJ and in this application are unmeritorious and do not support his position for bail to be granted. As the threshold for the High Court's revisionary power under s 401 of the CPC to be exercised has not been met, I dismiss the Applicant's application.

32 In conclusion, I think it is useful to remind the Applicant that while the option remains open to him to seek another bail review or file further applications to the High Court to exercise its powers to grant bail, he must ensure that there are proper grounds to support his applications to the High Court for bail to be granted. As set out in *Mohamed Razip and others v Public Prosecutor* [1987] SLR(R) 525 (at [17]) and reaffirmed by Menon CJ in *Muhammad Feroz Khan* (at [16]), once an application for bail has been rejected, the court would be extremely reluctant to grant bail where subsequent applications are filed to the same court, unless there has been a material change in circumstances or new facts have since come to light.

Vincent Hoong
Judge of the High Court

Wong Hin Pkin Wendell, Andrew Chua Ruiming, Dorothy Grace Tan Jun Wen and Yang Xinyan (Drew & Napier LLC) for the applicant; and
David Koh (Attorney-General's Chambers) for the respondent.