Public Prosecutor *v* Sollihin bin Anhar
[2015] SGCA 16

Case Number	: Criminal Reference No 3 of 2014
Decision Date	: 30 March 2015
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; Andrew Phang Boon Leong JA
Counsel Name(s)	: Gordon Oh, Hon Yi and Cheryl Lim (Attorney-General's Chambers) for the applicant; Thangavelu (Thangavelu LLC) and Ong Ying Peng (Ong Ying Ping Esq) for respondent.
Parties	: Public Prosecutor — Sollihin bin Anhar

Criminal Procedure and Sentencing – Bail

30 March 2015 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

1 These proceedings ("CRF 3/2014") arise from the decision of the High Court judge ("the Judge") in Criminal Revision No 12 of 2014 ("CR 12/2014") which was reported as *Public Prosecutor v Sollihin bin Anhar* [2014] SGHC 228 ("the GD"). The Judge dismissed the Public Prosecutor's application to revoke the order made by the district judge ("the District Judge") granting bail to the accused.

2 In these proceedings, the Public Prosecutor has referred two questions concerning the exercise of the court's discretion in revoking bail or varying bail conditions pursuant to ss 102(1) and 103(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") and the exercise of the court's revisionary jurisdiction in relation to an order of a State Court made pursuant to those provisions.

Background facts

3 The accused, who is the respondent in CRF 3/2014, was charged on 4 June 2014 with two counts of engaging in a conspiracy to cheat under s 420 read with ss 109 and 116 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). [note: 1] These are bailable offences. At the first mention before the District Judge, which was heard on the same day, the prosecution alleged that the accused had contacted potential witnesses with a view to influencing their evidence. The accused denied this. The District Judge granted the accused bail at $40,000 with one surety. One of the bail conditions imposed was that he was not to contact any of the prosecution witnesses ("the Bail Condition"). [note: 2]

4 At the second mention on 2 July 2014, nine new charges of engaging in a conspiracy to cheat were tendered against the accused. [note: 3] The prosecution also applied to revoke the bail that had previously been extended to the accused at the first mention. The prosecution alleged that the accused had, after the first mention, contacted five potential prosecution witnesses on ten separate occasions and had therefore committed multiple breaches of the Bail Condition. The prosecution relied on the affidavit of ASP Lee Thai Ching, Sam ("ASP Lee"), an officer of the Commercial Affairs Department. In his affidavit, ASP Lee deposed that he and other officers had received information concerning the accused's attempts to contact and influence the evidence of potential witnesses. The

affidavit also included various portions of statements taken from those witnesses who described the circumstances under which they had been contacted. The District Judge rejected the prosecution's application for the revocation of bail. In particular, he considered that ASP Lee's affidavit was in the nature of hearsay evidence and was inconclusive. However, the District Judge ordered that the bail amount be increased from $40,000 to $60,000 in the light of the new charges that had been tendered. [note: 4]

5 At the third mention on 15 July 2014, the prosecution tendered ten further charges against the accused under s 204A read with s 511 of the Penal Code. [note: 5] These charges were for attempting to intentionally pervert the course of justice. They corresponded to the ten occasions on which the accused had allegedly contacted and attempted to influence potential witnesses (these were the occasions that had formed the basis of the prosecution's attempt at the second mention to persuade the District Judge to revoke bail). On this occasion, the accused had been arrested pursuant to s 103(3)(*b*) of the CPC on the basis that there were "reasonable grounds for believing that he is likely to break or has broken any of the conditions of his bail or personal bond". The prosecution thus specifically made an application pursuant to s 103(4)(*b*) of the CPC seeking the revocation of the accused's bail on the basis that the accused had "broken or was likely to break the Bail Condition". Although the prosecution sought to rely only on ASP Lee's affidavit (as it had done at the second mention), it made further submissions as to the relevant standard of proof that is applicable when the court is concerned with whether there has been a breach of the Bail Condition. It submitted that the relevant standard should not be the criminal standard of proof beyond reasonable doubt; rather, all that was required is that there be "some evidence beyond just vague or general allegations."

6 The District Judge rejected the prosecution's application once again. He noted that as the prosecution was relying on the same evidence that it had relied on in the second mention, the application made under s 103(4) of the CPC was essentially identical to the application which had been made and dismissed at the second mention. He did, however, acknowledge the prosecution's submissions on the relevant standard of proof and made the following observation: [note: 6]

> The only thing I can see is that prosecution is more thorough this time round with references to some judgments to substantiate their submissions particularly the ground of standard of proof. Hence on this issue while *I agree that we need not have a full trial which require the same burden of proof beyond reasonable doubt*, I am fully aware that such allegations are being made by people who are alleged to be in a conspiracy with the Accused to commit offence of cheating. I feel therefore in such a situation in balancing the right to liberty and the need to secure the attendance of the accused should be in favour of the accused. While there is some concern that there is an attempt to influence the witness which is now translated into fresh charges, I am still not convinced that bail should be denied at this stage.
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> [emphasis added]

Although the District Judge rejected the prosecution's application, he nonetheless raised the quantum of the accused person's bail to $70,000 in light of the new charges that had been tendered and imposed a condition that no fresh offences be committed. [note: 7]

7 Dissatisfied with the District Judge's order at the third mention, the prosecution brought CR 12/2014 before the High Court seeking that the District Judge's order be reversed and that the bail that had been extended to the accused person be revoked. Before CR 12/2014 was heard, a further mention took place before the District Judge on 30 July 2014 at which further conspiracy charges were tendered against the accused. The bail, however, was not adjusted at this mention.

The decision of the Judge

8 Before the Judge, the prosecution submitted that there were "clear errors of law" in the District Judge's decision which led to a miscarriage of justice. In particular, the prosecution submitted that the relevant standard of proof which the District Judge should have applied in finding whether the Bail Condition had been breached by the accused was the civil standard of proof on a balance of probabilities and not the criminal standard of proof beyond reasonable doubt. The prosecution also pointed out that the strict rules of evidence do not apply in bail proceedings and submitted in that regard that the District Judge was wrong to have labelled ASP Lee's affidavit as hearsay evidence and to discard it on the basis that it lacked probative value.

9 The Judge agreed with the prosecution that the applicable standard of proof was not the criminal standard. However, he also found that the District Judge had not applied the criminal standard of proof when considering whether the accused had breached the Bail Condition at least at (and from) the third mention on 15 July 2014 (see [6] above). He also accepted that hearsay evidence could be relied upon in bail proceedings so long as it was properly evaluated. However, he concluded that the District Judge had not wholly rejected ASP Lee's affidavit on the basis that it was hearsay evidence. Instead, he found that the District Judge had properly evaluated the contents of the affidavit before arriving at the conclusion that there was insufficient evidence to establish a breach of the Bail Condition. He also noted that the prosecution could always make an application in the future under s 102(1) of the CPC to revoke bail or vary the conditions of bail if it uncovered further evidence showing the accused's breach of the Bail Condition. The Judge accordingly dismissed the prosecution's application as he concluded that the extension of bail to the accused by the District Judge did not give rise to any miscarriage of justice.

The two questions of law referred

10 The prosecution then applied by way of CRF 3/2014 to refer the following two questions of law to this court:

(a) When exercising its revisionary jurisdiction in respect of an order of a State Court made under s 102 or s 103(4) of the CPC, can the High Court consider all material facts, including those arising or known only after the order of the State Court was made?

(b) What is the applicable legal standard of proof when a court considers whether to revoke bail or vary bail conditions, pursuant to s 102 or s 103(4) of the CPC?

Our Decision

The first question

11 The first question is framed widely and appears to cover both the material facts existing at the time of the bail decision as well as those arising or coming to the knowledge of the relevant parties after the decision of the State Courts on the matter of bail has already been made. We pointed this out to the prosecution at the hearing of this reference and it was then clarified that the first question is intended to target only the latter category of material facts. We then asked the prosecution if there were any such material facts that arose after the decisions of the District Judge and before the hearing before the Judge, which the Judge had declined to consider. The prosecution admitted that there were no such facts presented to the Judge.

12 This is significant because it drives us inevitably to conclude that the first question is purely

hypothetical in nature. In *Public Prosecutor v Goldring Timothy Nicholas and others* [2014] 1 SLR 586 ("*Goldring Timothy Nicholas*") we observed (at [28]), that even though s 397(2) of the CPC in theory permits the prosecution to bring a free-standing abstract question of law of public interest to the Court of Appeal by leapfrogging the leave stage, this does not mean that the Court of Appeal is bound to answer all such questions. Section 397(2) of the CPC does not curtail the jurisdiction of this Court at the substantive stage to consider whether all the requirements stipulated in s 397(1) have been made out (see *Goldring Timothy Nicholas* at [26]). As to what those requirements are, we restated these in *Public Prosecutor v Leng Kah Poh* [2014] 4 SLR 1264 ("*Leng Kah Poh*") at [15] as follows:

> 15 The four requirements were stated in *Mohammad Faizal bin Sabtu v PP* [2013] 2 SLR 141 at [15]:
>
> (a) the reference must be made in relation to a criminal matter decided by the High Court in the exercise of its appellate or revisionary jurisdiction ("Requirement 1");
>
> (b) the reference must relate to questions of law and those questions of law must be questions of public interest ("Requirement 2");
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> (c) the question of law must have arisen from the case that was before the High Court ("Requirement 3"); and
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> (d) the determination of the question of law by the High Court must have affected the outcome of the case ("Requirement 4").

13 For present purposes, the material requirement is what we described in *Leng Kah Poh* as "Requirement 3". This requires that the question "must have arisen from the case that was before the High Court" (*Leng Kah Poh* at [15(c)]). A hypothetical question, as is the first question in the case before us, does not meet Requirement 3. We therefore are not minded to answer the first question.

14 However, the prosecution highlighted a particular proposition contained in the GD (at [46]) that it took issue with and suggested that our observations on this would assist those involved in the conduct of such proceedings. The passage in question from the GD is as follows:

> Third, s 102(1) of the CPC states that the court may vary the conditions of bail, impose further conditions or cause the released person to be arrested and may commit him to custody if it is shown that there has either been a material change of circumstances or new facts have since come to light. On this basis, if the Prosecution manages to uncover further evidence to prove that the Respondent had contacted potential witnesses between the second and the third mentions, s 102(1) of the CPC permits the Prosecution to make a fresh application for revocation of the Respondent's bail. Such an application can also be made in the event that the Prosecution obtains further evidence to show that the Respondent has made fresh attempts to contact the potential witnesses. This was recognised by the DJ when he dismissed the Prosecution's application for revocation of the bail at the third mention:
>
> > Accordingly, the proper course is for prosecution to file criminal motion in the High Court to overturn my decision. There is of course *nothing to stop prosecution from coming back to me if there are new grounds why bail should be revoked*.

15 The prosecution submits that this statement of the legal position is incorrect because it suggests that if new facts or evidence arises, the prosecution may not raise this in the High Court at

the hearing of the criminal revision but would instead be required to make a fresh application to the State Court in question. In particular, the prosecution submits that a court exercising its revisionary jurisdiction is entitled to consider new facts pursuant to s 392(1) read with s 401(2) of the CPC when it is "necessary" to do so, and further that it should do so in the context of a bail review if this would be in the "interests of justice".

16 We make two observations on this. First, it is well established that the revisionary jurisdiction of the High Court is only exercised to correct errors in a lower court decision that has resulted in a miscarriage of justice. When new facts arise or are discovered after a bail decision made by a lower court, that bail decision is not rendered wrong as a result of such new facts or evidence. It may well be that the decision should no longer stand in the light of this new material but this does not mandate the conclusion that in such circumstances, the appropriate course is to bring such new material to the High Court in its revisionary jurisdiction. On the contrary, in the context of bail, it is open and indeed appropriate that such new material be brought to the same court that made the original bail decision to enable it to exercise its power to revoke or vary the bail it had extended previously, pursuant to s 102(1) of the CPC, which provides:

> **Withdrawal, change of conditions, etc., of bail**
>
> **102.**—(1) If a court has granted bail to a released person and it is shown that —
>
> (*a*) there has been a material change of circumstances; or
>
> (*b*) new facts have since come to light,
>
> the court may vary the conditions of the bail or personal bond, or impose further conditions for the bail or the personal bond, or cause the released person to be arrested and may commit him to custody.

17 To suggest that a revisionary court should consider new facts to review the propriety of a lower court's bail decision without the prosecution having availed itself of the process set out in s 102(1) of the CPC does not cohere with the scope of the revisionary court's powers which is concerned with the correction of errors and not with the consideration of new material that may be relevant to earlier bail decisions. In these circumstances, it also cannot be said that it is "necessary" for the court exercising its revisionary jurisdiction to consider these new facts pursuant to s 392(1) read with s 401(2) of the CPC when reviewing the propriety of a lower court's bail decision. On the contrary, where such an avenue exists, the appropriate course is to raise the new material before the original court for its reconsideration.

18 Second, and perhaps more importantly, in considering the prosecution's submission on this point, it is necessary first to appreciate the rationale that underlies the possibility in certain circumstances for a higher court, when it is required to review a lower court's decision, to admit new facts or evidence that was unavailable to the lower court when it made that decision,. In the context of appeals, the decision of the first instance court that is subsequently appealed against is final. Once the first instance court has rendered its decision, it becomes *functus officio* in relation to the matters that it has decided and a party will no longer have any further recourse to *that* court. In the light of such finality, the law allows a measure of flexibility by permitting the admission of new facts before an appellate court if the application to do so can be brought within the ambit of the principles laid down in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*").

19 We were then referred to the decision in *Juma'at bin Samad v Public Prosecutor* [1993] 2

SLR(R) 327 ("*Juma'at v PP*"), in which the High Court applied the principle in *Ladd v Marshall* to determine the admissibility of new evidence not in the context of an appeal but of revisionary proceedings that had been brought after a conviction upon a guilty plea. The prosecution sought to rely on this decision to support its contention that the High Court *in revisionary proceedings concerning bail decisions* should likewise be entitled to consider new facts. In our judgment, there is a fundamental difference between the revisionary proceedings in *Juma'at v PP* and those concerning bail decisions. In *Juma'at v PP*, the accused had sought to adduce new evidence to show that he was entitled to raise the defence of intoxication *after he had pleaded guilty* to a charge of housebreaking in order to commit theft and had been sentenced to a term of 18 months' imprisonment. In those circumstances, the accused could not have gone back to the district judge who had convicted him based on his guilty plea; nor could he have appealed against the conviction after having pleaded guilty. Hence, the conviction was final and the only way in which he could challenge it and attempt to have it set aside was by way of revisionary proceedings. In such a setting, the revisionary court could be justified in considering the possibility of admitting new evidence, although, it should be noted that on the facts in that case the application was refused. This is entirely different from the present case where the bail decision of the District Judge is not final and where there is express provision for it to be reconsidered in the light of new material.

20 For these reasons, we see no reason to take issue with the observations of the Judge that we have set out above (at [14]). Of course, even on this basis, both the prosecution and the accused are able to bring revisionary proceedings if either of them is dissatisfied with the bail decision of the lower court *after* it has considered any new material.

The second question

21 We turn to the second question that concerns the applicable legal standard of proof when a court considers whether to vary or revoke bail pursuant to ss 102(1) or 103(4) of the CPC. This question lies at the heart of the decision of the Judge and there can be no preliminary objection to the exercise of this court's substantive jurisdiction to answer this question.

22 The Judge held that the applicable standard proof is not that of proof beyond a reasonable doubt (GD at [33]). However, he did not articulate in express terms any applicable standard. The prosecution argued that the applicable standard is the civil standard of proof on a balance of probabilities. In our judgment, this is not the applicable standard of proof. Rather, there is no precise standard of proof when a court deals with matters concerning the granting, varying or revoking of bail. We arrive at this conclusion having regard to the nature of bail proceedings and the wording of s 103(4) of the CPC. We will proceed to deal with each of these considerations in turn and also set out guidance for the lower courts as to how they should approach such matters.

The nature of bail proceedings

23 Save for the fact that bail must be granted at the first mention in cases involving bailable offences pursuant to s 92(1) of the CPC, all bail decisions in relation to the granting or denial of bail for non-bailable offences, the quantum of bail, the imposition of bail conditions and the revocation of bail entail the exercise of judicial discretion. Unsurprisingly, especially in the light of the serious repercussions that a bail decision may have on an individual's right to personal liberty, this discretion must be exercised judiciously. In *Gudikanti Narasimhulu and others v Public Prosecutor, High Court of Andhra Pradesh*, AIR 1978 SC 429 ("*Gudikanti Narasimhulu*") the Supreme Court of India made the following observation (at [1]):

> … Personal liberty, deprived when bail is refused, is too precious a value in our constitutional

> system … that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community.

24 It is thus often said that a bail decision entails balancing the right of the accused to liberty before he has been convicted with the interests of the community as a whole. The latter covers a broad based range of considerations including the need to secure the attendance of the accused, which is a matter of importance to society because it is directed at upholding the efficacy of the criminal justice system. Other aspects of the interests of society include the need to guard against the possibility of witnesses being tampered with which could prejudice a fair trial or against the danger of further offences being committed by the accused if he were not confined. The court, in appropriate circumstances, will similarly also take into consideration other factors in the accused person's interest such as his health or the fact that trial is being unduly delayed. The making of a bail decision has therefore been described as a balancing of "the bi-focal interests of justice – to the individual involved and society affected" (*Gudikanti Narasimhulu* at [10]).

25 While the granting or revocation of bail entails a balancing exercise between the interests of the individual and those of society, bail proceedings are also recognised as being interlocutory in nature (see *Mohamed Razip and others v Public Prosecutor* [1987] SLR(R) 525 at [15]). As such, the court does not undertake a rigorous fact-finding process. Rather, bail proceedings are conducted expeditiously and in the course of such proceedings, the court, without applying the strict rules of evidence, conducts the balancing exercise that we have described above. In doing so, the court must of course assess the evidence that has been adduced but not with a view to making factual findings. For example, in *Public Prosecutor v Yang Yin* [2015] 2 SLR 78 ("*Yang Yin*"), the revisionary court was invited to review a decision to grant bail to an accused charged with a non-bailable offence. In revoking the bail that had been granted, the court considered the evidence adduced and assessed whether in totality, there were grounds to believe that there was a real risk of the accused absconding. In this regard, the court did not endeavour to determine as a fact by applying any particular standard of proof that the accused would abscond if granted bail. On the contrary, the court specifically refrained from making any determinative findings of fact.

26 Indeed, it is essential that a court should avoid making such findings of fact in interlocutory applications because any such finding, if made, could potentially have a bearing on the ultimate questions that might have to be decided at trial. As seen from this case itself, it could certainly prejudice the accused in the present proceedings if the court were to make a finding of fact, based on either standard of proof, that he had breached the Bail Condition by tampering with witnesses, especially given that the accused has also been charged for the very offence of tampering with witnesses which has not yet been tried.

27 In our judgment, given the nature of bail proceedings, which are in a sense, *sui generis*, it would be inappropriate to apply any specific standard of proof of the sort that a court usually takes reference from in the context of a trial where it is called upon to make determinative findings of fact. This analysis applies to bail-related applications brought under ss 102(1) and s 103(4) of the CPC and we are fortified in this view by the words of these sections of the CPC, to which we now turn.

The wording of ss 102(1) and 103(4) of the CPC

28 We have already laid out s 102(1) of the CPC above (at [16]). Section 103 of the CPC provides that:

> **Liability to arrest for absconding or breaking conditions of bail or personal bond**

103.—(1) If a released person under a duty to surrender to custody, or to make himself available for investigations or to attend court, does not do so, he may be arrested without a warrant.

(2) If a released person leaves the court at any time after he has surrendered into its custody or after he has attended court on the day and at the time appointed for him to do so, and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest.

(3) A released person under a duty to surrender to custody, or to make himself available for investigations or to attend court on the day and at the time and place appointed for him to do so, may be arrested without a warrant if —

(*a*) there are reasonable grounds for believing that he is unlikely to surrender to custody, or to make himself available for investigations or to attend court;

(*b*) there are reasonable grounds for believing that he is ***likely*** to break or has broken any of the conditions of his bail or personal bond; or

(*c*) any of his sureties informs the police or court that the person is unlikely to surrender to custody, or to make himself available for investigations or to attend court and that the surety therefore wishes to be relieved of his obligations as a surety.

(4) When such a person is brought before the court pursuant to an arrest under this section and the court ***thinks*** that he —

(*a*) is unlikely to surrender to custody, or to make himself available for investigations or to attend court; or

(*b*) has broken or is ***likely*** to break any conditions of his bail or personal bond,

The court may remand him in custody or grant him bail subject to such conditions as it thinks fit.

[emphasis added in bold italics]

Two observations may be made in the light of the wording of these sections of the CPC.

29 First, in our judgment, it is evident from the way the sections are framed, that it will be unsuitable to peg the statutory threshold to be met before a court may vary or revoke a bail decision that had previously been granted to any specific standard of proof.

30 Under s 103(4), the court may revoke or vary bail conditions when "the court *thinks*" that the accused "is *unlikely* to surrender to custody, or to make himself available for investigations or to attend court" or "has broken or is *likely* to break any conditions of his bail or personal bond" [emphases added]. Save where there is an allegation that the accused has broken any conditions of bail, all the other criteria require the court to form a predictive view of what it "thinks" is "likely" or "unlikely" to happen. This is not language that calls for any particular standard of proof in the conventional sense to be applied simply because it is not language that is directed at findings of fact being made. Rather, it is language that calls for an assessment to be made of the various competing considerations. This, indeed, was the approach taken in *Yang Yin* as we have described above (at [25]). The court, when engaged under s 103(4), should therefore not make findings of fact; rather, it should consider the evidence and then, having regard to all the evidence that is before it and

allocating to that evidence such weight as is appropriate having regard to its quality, specificity, and inherent probability or improbability, ask itself whether it "thinks" that the consequences stated are "likely" or "unlikely". It should then consider the question of whether to vary the original orders it made in relation to bail in that light, keeping firmly in mind the fact that it is ultimately engaged in a balancing exercise between the interests of the accused person and those of society as a whole.

31 As for s 102(1), although the words used are that bail may be revoked or varied when "a material change of circumstances" or "new facts" are "shown", it nonetheless does not require a court to make any determinative findings of fact. Rather, it only refers to situations where the court is required to consider new or newly discovered facts, events or evidence and then undertake the balancing exercise to decide whether to revoke or vary a prior bail decision. This was exactly what the Judge had in mind when he made the observation we have reproduced above (at [14]), which we have affirmed, that the prosecution in this case may make a fresh application for the revocation of bail before the State Courts if "further evidence" concerning the accused person's tampering with witnesses should arise. In our judgment, there should be no distinction between the approach taken by a court towards an application made under s 102(1) and that taken in an application under s 103(4). Indeed it would be odd if different methodologies were adopted when a similar application for the revocation of bail, premised upon the same evidence, may often be made under either provision. This is exactly what has happened in the case before us where the prosecution relied solely on ASP Lee's affidavit at both the second and third mentions and where s 103(4) was only relied upon at the latter mention.

32 Secondly, with specific regard to s 103(4)(*b*), the analysis should not change even where the allegation is that the accused "has broken a condition of bail". It must be emphasised that the word used is that the court "thinks" rather than "finds" that the bail condition has been breached. This also follows from the fact that in the context of such an application, the court remains concerned with a balancing exercise which it must conduct with a measure of expeditiousness and usually on the basis of affidavits and without oral evidence that is tested by cross-examination. The revocation of bail in such circumstances is a consequence of the court's conclusion that the balance of interests has shifted; the grant of bail is not revoked as a punishment imposed for breaching the bail condition.

33 In this regard, an observation of Latham LJ in *Regina (Director of Public Prosecutions) v Havering Magistrates' Court* [2001] 1 WLR 805 ("*Havering*"), a case which dealt with s 7(5) of the Bail Act 1976 (c 63) (UK) from which,s 103(4) of the CPC was adapted (see *The Criminal Procedure Code of Singapore* (Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir gen eds) (Academy Publishing, 2012) at p 157) bears noting (at [38]):

> Proceedings under section 7(5) are by their nature emergency proceedings to determine whether or not a person, who was not considered to present the risks which would have justified remanding in custody in the first instance, none the less does now present one or other of those risks. *It is true that a literal reading of section 7(5) could lead to the conclusion that the mere fact of a breach of condition could justify detention. But it should be noted that such a finding only gives the justice the power to detain, and not the duty to detain. It seems to me that in exercising that power the justice would not be entitled to order detention by reason simply of the finding of a breach*; that in itself is not a justification for the refusal of bail under paragraph 2 of Part I of Schedule 1 to the Act. … *The fact of a breach of a condition may be some evidence, even powerful evidence, of a relevant risk arising. But it is no more than one of the factors which a justice must consider in exercising his discretion under section 7(5)*.
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> [emphasis added]

34 Hence, we reiterate that a decision to revoke bail pursuant to s 103(4)(*b*) of the CPC is not to be justified on the grounds that it is to punish the accused for breaching a bail condition. The condition would have been imposed in the first place to enable the court to strike a suitable balance between the interests of the accused and those of society. If that balance has shifted, then the court may intervene. But the fact remains that the breach or anticipated breach of the condition is only a factor, albeit a potentially important one, in the balancing exercise which remains the premise of any decision to revoke bail - and so the question for the court is whether that balance has shifted. It thus follows that even where the allegation concerns an actual breach of a bail condition, the court seized of the matter need only decide whether it "thinks" there was a breach. There is no requirement for the court to make any finding that there has in fact been a breach and it needs only to assess the evidence in line with the balancing exercise that we have outlined above.

35 We would add that any revocation of bail under s 102(1) of the CPC should, similarly, not be done for the purpose of punishing the accused for any subsequent acts he might have committed while on bail. Rather, in this situation also, the court is engaged in the balancing exercise that we have described and it considers whether in the light of the new evidence or the change of circumstances, the balance between the interests of the accused and those of society has shifted away from the initial grant of bail or from the terms on which bail was granted to such an extent that bail should be varied or revoked. Again, this does not encompass any fact-finding on the part of the court.

36 In this connection, we would make one further observation in relation to a point that was raised by the accused. As the accused has been charged with tampering with witnesses, he argued that any finding that he is "likely to break a bail condition" would give rise to grave injustice as that would undermine the presumption of innocence that is to be accorded to the accused. We have already noted above (at [25]) that a judge, in bail proceedings, should not and is not required to make a finding of fact (by reference to any particular standard of proof) that the accused has tampered with witnesses. This however, does not mean that a court cannot form a provisional view as to the likelihood of the accused tampering with witnesses. The argument of the accused, taken to its logical conclusion, would mean then that a court could never refuse bail in such a case because it would first have had to find that the accused had done that with which he is charged. This cannot be the case. In fact, it would be ironic indeed if the one class of cases for which bail can never be refused is that concerning offences of tampering with witnesses. We reiterate that the court should avoid making determinative findings of fact; but it is entitled and indeed *required* to assess whether on the material before it, one or more of the relevant criteria set out in ss 102(1) or 103(4) of the CPC have been met. Otherwise, the provisions and the framework as a whole would be rendered unworkable. In our judgment, the assessment and the approach that is to be adopted by a court in applications made under ss 102(1) or 103(4) which we have described above (at [30]–[31] and [34]–[35]) best protects the primacy of the presumption of innocence whilst ensuring the workability of the bail framework.

Orders to be made in light of the answer to the second question

37 Pursuant to s 397(5) of the CPC, we may make such orders as the High Court might have made as we consider just for the disposal of the case in the light of the answers given to the questions referred. We have answered the second question and are satisfied that certain orders are warranted.

38 The District Judge assessed the affidavit of ASP Lee and came to the conclusion that his evidence was hearsay and "inconclusive". However, this was not the correct yardstick; conclusive evidence is certainly not the applicable standard when a court decides whether to revoke the bail granted to an accused under ss 102(1) or 103(4) of the CPC. Even if it did involve hearsay evidence, a court in bail proceedings does not have to apply the strict evidential rules applicable to trials.

Affidavit evidence is frequently relied upon in applications regarding the granting or revocation of bail which, as we have already noted, are to be dealt with quickly and in a summary way. At such proceedings, the court is therefore entitled to have regard to hearsay evidence subject to evaluating it and assigning it the appropriate weight.

39 The inquiry should instead have been directed towards whether the evidence adduced by the prosecution provided grounds for the court to "think" that the accused had breached the Bail Condition or that the accused is "likely" to tamper with witnesses if bail were not revoked and if so, whether the bail earlier granted should be revoked.

40 ASP Lee's affidavit contained excerpts of witness statements and set out multiple instances of the accused allegedly tampering with witnesses by making threatening phone calls to them. Telephone logs were referred to and telephone numbers traced to the accused were mentioned. Even though there was one phone number that was used to make calls that was not registered under the accused's name, multiple witnesses had stated that it was the accused that had used that number to phone them. Assessed in the round, the statements found in ASP Lee's affidavit were specific and precise with a considerable degree of detail. The statements also corroborated one another to a certain extent.

41 As against the evidence that had been adduced by the prosecution, the accused only made a bare denial through his counsel. There was no attempt to contradict the statements contained in ASP Lee's affidavit. In the course of the arguments before us, counsel for the accused submitted that there was nothing else the accused could do given that his position was that he had not contacted the witnesses at all. However, we note that there was no affidavit at all stating this and there was no attempt at all to condescend to particulars despite the details that were contained in ASP Lee's affidavit.

42 In our judgment, having regard to the evidence that was presented, there was more than sufficient basis to justify the revocation of the accused's bail in the circumstances of the case at the time of the various mentions before the District Judge. However, we are mindful of the fact that almost nine months have passed since ASP Lee's affidavit was filed. There is no material before us to indicate how the accused has conducted himself during this time and this could conceivably have a bearing on the view the court may take as to whether the balance has shifted back sufficiently or whether the revocation of bail remains warranted. In the circumstances, we consider that the appropriate order for us to make is to remit the matter to the State Courts to reconsider the prosecution's application for revocation of the bail in the light of the principles we have set out and the observations we have made and also in the light of any further evidence as may be adduced. This court is permitted to make such an order given that "the powers of the Court of Appeal in a criminal reference are wide-ranging and all-encompassing, and are not really limited in any way by any statutory restrictions" (*Public Prosecutor v Tan Meng Khin and others* [1995] 2 SLR(R) 420 at [55]).

Conclusion

43 For the reasons we have given, we decline to answer the first question as it is a purely hypothetical question. We, however, see no reason to disagree with what the Judge said at [46] of the GD as to what should be done when new facts arise after the court has issued the original bail decision.

44 Our answer to the second question is that there is no applicable standard of proof. Whether a court is seized under ss 102(1) or 103(4) of the CPC, its decision to vary or revoke bail must be premised on an assessment of the evidence that is adduced with a view to arriving at a bail decision

that appropriately balances the interests of the accused and those of society. Specifically, the court, should not make findings of fact; rather, it should consider the evidence and then, having regard to all the evidence that is before it and allocating to that evidence such weight as is appropriate having regard to its quality, specificity, and inherent probability or improbability, ask itself whether it "thinks" that the consequences stated are "likely" or "unlikely".

45 Further, in the light of our answer to the second question, and having regard to the observations we have made, we order that the matter be remitted to the State Courts for reconsideration.

[note: 1] Petitioner's Bundle of Documents in CR 12/2014, pp 1-2.

[note: 2] Respondent's Bundle of Documents in CR 12/2014, p 10.

[note: 3] Respondent's Bundle of Documents in CR 12/2014, p 13; Petitioner's Bundle of Documents in CR 12/2014, pp 3-11.

[note: 4] Respondent's Bundle of Documents in CR 12/2014, p 15.

[note: 5] Respondent's Bundle of Documents in CR 12/2014, p 17; Petitioner's Bundle of Documents in CR 12/2014, pp 12-21.

[note: 6] Respondent's Bundle of Documents in CR 12/2014, p 21.

[note: 7] Respondent's Bundle of Documents in CR 12/2014, p 22.