

Case Digest

HKSAR v Leung Kwok Hung (梁國雄)

HCCP 136/2021; [2021] HKCFI 1227

(Court of First Instance)

(Full text of the Court's reasons for decision in English at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=135726&QS=%2B&TP=JU)

Before: Hon Toh J

Date of Hearing: 29 March 2021

Date of Reasons for Decision: 13 May 2021

Bail – conspiracy to commit subversion contrary to NSL 22(1)(3) and ss. 159A and 159C of Crimes Ordinance (Cap. 200)

1. The Applicant was charged with one count of conspiracy to commit subversion contrary to NSL 22(1)(3) and ss. 159A and 159C of the Crimes Ordinance (Cap. 200) in relation to a scheme by the Applicant and others to undermine the “proper functioning of the Legislative Council so as to paralyse the operations of the HKSAR government, eventually compelling the Chief Executive of HKSAR to resign”. He applied to the Court for bail under s. 9J of the Criminal Procedure Ordinance (Cap. 221) after the Chief Magistrate had refused to admit him to bail. The prosecution objected to the application, submitting (inter alia) that the Applicant was determined and resolute in his stand against the Government and the NSL.

2. Held, the application refused, after applying NSL 42(2) and the CFA's decision in *HKSAR v Lai Chee Ying* [2021] HKCFA 3. As decided by Anthea Pang J (as she then was) in *HKSAR v Lai Chee Ying* [2021] HKCFI 448, the Court had to carry out “a predictive and evaluative exercise” in determining if the Respondent could pass the first threshold for bail stipulated in the CFA's decision. Having taken into

account all the materials before it, including the parties' submissions and documents or materials that might not be admissible as evidence at trial, the Court was not satisfied that there were sufficient grounds for believing that the Applicant would not continue to commit acts endangering national security if granted bail. Hence, the Court found that the Applicant had failed to overcome the said first threshold.

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