

Case Summary

HKSAR v Fan Kwok Wai Gary (范國威)

HCCP 454/2021; [2022] HKCFI 1173

(Court of First Instance)

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

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143745&QS=%28hccp%7C454%2F2021%29&TP=JU)

Before: Hon Toh J

Dates of Hearing: 14 and 19 April 2022

Date of Reasons for Decision: 26 April 2022

Bail review – second application – whether material change in circumstances – pre-trial custody for a year – proactive case management

Background

1. This was the Applicant's second application for bail before the CFI in relation to the Chief Magistrate's refusal of bail in relation to a charge of "conspiracy to commit subversion" contrary to NSL 22(1)(3) and ss. 159A and 159C of the Crimes Ordinance (Cap. 200). The Applicant was charged with 46 others in the same case, WKCC 813/2021, where the Respondent alleged that the Defendants sought to achieve a common criminal purpose 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". See *HKSAR v Fan Kwok Wai Gary* [2021] HKCFI 3109.

Major provision(s) and issue(s) under consideration

- NSL 42(1)

2. NSL 42(1) provides that “the law enforcement and judicial authorities of the [HKSAR] shall ensure that cases concerning offence endangering national security are handled in a fair and timely manner”. Noting that the Defendants in this case, along with the Applicant, had been in pre-trial custody for a year, the Court expressed concern about the long delay in the proceeding being brought to trial.

Summary of the Court’s rulings

3. On the basis that there was no material change in circumstances, the Court maintained the view that the Applicant had not managed to overcome the first threshold of the test laid down by the CFA in *HKSAR v Lai Chee Ying* [2021] HKCFA 3* and refused his bail application accordingly. (paras. 9 and 19)

4. Bearing in mind the observations made by the Appeal Committee of the CFA on NSL 42(1) in *HKSAR v NG Hau Yi Sidney* [2021] HKCFA 42 (at para. 34) that magistrates and judges should proactively sought ways to bring NSL-related matters to trial expeditiously, and given the long wait for committal and possibly trial in this case, the Court stated that it was time for the lower courts to consider case management exercise to impose milestone dates, that is, dates which were set in concrete and parties would have to work around those dates unless there were exceptional circumstances to move a date. (paras. 10 and 12)

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* Editor’s Note: In that case, the CFA held that in applying the test under NSL 42(2), the court must first decide whether it “has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security”. If, having taken into account all relevant materials, the court concluded that it did not have sufficient grounds for believing that the accused would not continue to commit acts endangering national security, bail must be refused: see para. 70(d)-(e).