

Case Digest

HKSAR v Fung Tat Chun Frankie (馮達浚)

HCCP 584/2021; [2022] HKCFI 744
(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=143383&QS=%28hccp%7C584%2F2021%29&TP=JU)

Before: Hon Toh J

Date of Hearing: 4 November 2021

Date of Reasons for Decision: 6 April 2022

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 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”. Having been refused bail by the Chief Magistrate, the Applicant applied to the Court for bail under s. 9J of the Criminal Procedure Ordinance (Cap. 221).

2. Held, refusing the application, that the Applicant had failed to overcome the first threshold laid down by the CFA in *HKSAR v Lai Chee Ying* [2021] HKCFA 3 for applying NSL 42(2). Having read the documentary exhibits and having seen the videos both submitted by the Respondent, the Court had no doubt that the Applicant was determined and resolute in his belief, and that he would continue to commit acts endangering national security if granted bail. The Court considered that what the Applicant had said over the course of the relevant interviews went beyond election rhetoric and clearly showed his determination to disseminate his political agenda. In coming to its conclusion, the Court took into account the observation by Anthea Pang J (as she then was) in *HKSAR v Lai Chee Ying* [2021] HKCFI 448, at para. 21 that “one who is

determined and resolute may be more readily disposed to committing the prohibited acts than one who is merely drifting along and lacks such enthusiasm”.

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