

Case Digest

HKSAR v Sham Tsz Kit (岑子杰)

HCCP 135/2021; [2021] HKCFI 1331

(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=135725&QS=%2B&TP=JU)

Before: Hon Toh J

Date of Hearing: 12 April 2021

Date of Reasons for Decision: 13 May 2021

Bail review – 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.

2. Held, the application dismissed, after applying NSL 42(2) and the CFA's decision in *HKSAR v Lai Chee Ying* [2021] HKCFA 3. Having seen and read all the materials before it (including the parties' submissions) as well as having considered the bail conditions offered, the Court held that there were not sufficient grounds for believing that the Applicant would not continue to commit acts endangering national security if granted bail. It agreed with the prosecution that the Applicant was a determined and resolute person who still advocated for

the HKSARG acceding to the “Five Demands” at the door of a police station as late as February 2021. Hence, the Court found that the Applicant had failed to pass the first threshold for bail as laid down by the CFA in the said decision for applying NSL 42(2).

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