

Case Summary

HKSAR v Chan Chi Chuen Raymond (陳志全)

HCCP 473/2021; [2021] HKCFI 2997

(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=139819&QS=%28hccp%7C473%2F2021%29&TP=JU)

Before: Hon Toh J

Date of Hearing: 16 September 2021

Date of Reasons for Decision: 2 November 2021

Bail review – application of thresholds under NSL 42(2) – relevant considerations – individual circumstances of applicant – bail conditions

Bail – reporting restrictions – integrity of proceedings

Background

1. The Applicant was arrested together with 46 others and 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). He applied to the Court for bail after the Chief Magistrate had refused his bail.

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

- NSL 42(2)
- Criminal Procedure Ordinance (Cap. 221) (“CPO”), Part IA

2. The Court discussed the approach to a bail application where other applicants in the same case were successful in being granted bail and made some observations on the argument for lifting reporting restriction before applying *HKSAR v Lai Chee Ying* [2021] HKCFA 3 in this case.

Summary of the Court's rulings

3. While the argument for lifting of reporting restriction might be superficially attractive, the Court in considering bail had a duty to protect the integrity of the future proceedings and to ensure that what was said at the preliminary stage in the bail application did not hamper the ultimate handling of the case by counsel for the Applicant in the trial. (para. 24)

4. The court, in considering bail, had to look at the individual circumstances of each particular applicant. While it might be helpful for counsel to refer to other applicants involved in the same case as to their success in being granted bail, it was ultimately for the Court to make the evaluation and assessment based on the individual applicant's background and conduct in the past, whether he, if granted bail, would not continue to commit acts endangering national security. (para. 23)

5. The Court considered the Applicant's bail application under NSL 42(2) by considering the two thresholds laid down by the CFA in *HKSAR v Lai Chee Ying* [2021] HKCFA 3. In conducting the assessment and evaluation, the Court took into account everything including matters of public record and assertions, which might not be of public record, including the Applicant's past performance, and conduct, and the bail conditions offered, to make the "predictive and evaluative exercise" as in *HKSAR v Lai Chee Ying* [2021] HKCFI 448. (para. 26)

6. As regards the first threshold, the Court, having taken into account everything that had been said in the scale including the Applicant's past performance and conduct, believed that with the conditions imposed for bail, the Applicant would not continue to commit acts endangering national security if bail was granted. (para 27) As regards the second threshold, the Court was persuaded that with the stringent bail conditions

imposed, the Applicant would surrender to custody at the appointed time.
(paras 28-31) The Court therefore granted bail to the Applicant.

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