

Case Summary

HKSAR v Leung Kam Wai (梁錦威) and Another

HCCP 509/2021; [2021] HKCFI 3214

(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=139993&QS=%28HCCP%7C509%2F2021%29&TP=JU)

Before: Hon Toh J

Date of Hearing: 29 September 2021

Date of Reasons for Decision: 9 November 2021

Bail review – failure to comply with notice to provide information contrary to s. 3(3)(b) of Sch. 5 to IR – IR a necessary part of NSL and its implementation – thresholds for bail applications in cases concerning offences endangering national security pursuant to NSL 42(2) applicable – subject offence being a continuing offence – Applicants would continue to commit acts endangering national security if granted bail

Background

1. The Applicants were charged with the offence of failing to comply with notice to provide information, contrary to s. 3(3)(b) of Sch. 5 (Rules on Requiring Foreign and Taiwan Political Organizations and Agents to Provide Information by Reason of Activities Concerning Hong Kong) to the Implementation Rules for Article 43 of the NSL. The Applicants applied to the Court for a review under s. 9J of the Criminal Procedure Ordinance (Cap. 221) after their applications for bail had been refused by an acting Chief Magistrate.

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

- NSL 42(2)
- Implementation Rules for Article 43 of the NSL (“IR”), Sch. 5, s. 3

2. The Court examined whether the offence under s. 3(3)(b) of Sch. 5 to the IR was an offence endangering national security or was merely an ancillary offence for the purposes of determining whether the Applicants’ bail applications should be considered under NSL 42(2).

Summary of the Court’s rulings

3. The IR could not be segregated from the NSL. They were a necessary part of the NSL and its implementation. Therefore, the thresholds laid down by the CFA in *HKSAR v Lai Chee Ying* [2021] HKCFA 3 for bail applications made by defendants in cases concerning offences endangering national security pursuant to NSL 42(2) applied in the present case. (para. 9)

4. After noting that the acting Chief Magistrate had considered that the offence under s. 3(3)(b) of Sch. 5 to the IR was a continuing offence and that the Applicants’ outright refusal to provide information would hinder the investigation of offences endangering national security and might result in the potential loss of evidence and escape of offenders, and that the Court would give an urgent date for trial, the Judge refused the Applicants’ applications, believing that if granted bail the Applicants would continue to commit acts endangering national security. (paras. 10-12)

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