IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 51

Court of Appeal / OAC No 1 of 2024

Between

Roslan bin Bakar

… *Applicant*

And

Attorney-General of Singapore

… *Respondent*

JUDGMENT

[Constitutional Law — Equal protection of the law]
[Constitutional Law — Fundamental liberties — Right to life and personal liberty]
[Criminal Procedure and Sentencing — Stay of execution]

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Roslan bin Bakar
v
Attorney-General

[2024] SGCA 51

Court of Appeal — OAC No 1 of 2024
Tay Yong Kwang JCA
14 November 2024

14 November 2024

Tay Yong Kwang JCA:

1 This is an application under Division 4 of Part 5 of the Supreme Court of Judicature Act 1969 made by Mr Roslan Bin Bakar ("**Mr Roslan**"), a prisoner awaiting capital punishment ("**PACP**"). It is an application for permission to make a post-appeal application in a capital case or "PACC application". The execution of Mr Roslan is scheduled for tomorrow.

2 In this application, Mr Roslan seeks the following orders:

> 1) That the execution of the applicant scheduled for 15 November 2024 be stayed pending the determination of this permission application and any consequent PACC application.
>
> 2) That permission be granted to file a PACC application seeking a prohibiting order of the execution of the applicant scheduled for 15 November 2024, and a quashing order of the notice of execution dated 11 November 2024.
>
> 3) Any other relief this Honourable Court deems fit.

Facts and history of proceedings

3 Mr Roslan was tried jointly with Pausi bin Jefridin ("**Mr Pausi**") in CC 35/2009 on two charges: (a) a capital charge of trafficking in not less than 96.07g of diamorphine; and (b) a non-capital charge of trafficking in not less than 76.37g of methamphetamine. Both charges constituted offences under s 5(1)(*a*) read with s 33 of the Misue of Drugs Act (Cap 185, 2008 Rev Ed) (the "**MDA**"). On 22 April 2010, Mr Roslan and Mr Pausi were convicted and sentenced to death on the first charge: see *Public Prosecutor v Pausi bin Jefridin and another* [2010] SGHC 121.

4 Mr Roslan and Mr Pausi appealed against their conviction and sentence in CCA 10/2010 ("**CCA 10**"). Mr Roslan maintained his defence of alibi at the trial claiming that he was not present at the various locations during the drug transaction and was not involved in the trafficking offences. On 17 March 2011, both appeals were dismissed by the Court of Appeal.

5 On 30 November 2015, Mr Roslan applied in CA/CM 1/2015 to adduce new evidence and to seek a retrial based on the new evidence. He alleged that both he and Mr Pausi had lied at the trial and on appeal and that the truth was that although Mr Roslan was at the scene of the drug transaction, he did not play any role and was merely a drug consumer caught in the wrong place at the wrong time. This application was dismissed by the Court of Appeal: *Roslan bin Bakar v Public Prosecutor* [2016] 3 SLR 1023 at [1].

6 On 24 June 2016, Mr Roslan applied in HC/CM 40/2016 ("**CM 40**") for re-sentencing pursuant to the newly promulgated s 33B of the MDA and the Misue of Drugs (Amendment) Act 2012 (Transitional Provisions Regulations) 2014 which allowed for alternative sentencing instead of the death penalty if

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certain conditions were met. Mr Roslan admitted that he was involved in the drug transaction but was merely a courier (which would have satisfied one of the conditions for resentencing). CM 40 was dismissed by the High Court on 13 November 2017: *Roslan bin Bakar v Public Prosecutor and another matter* [2017] SGHC 291 at [9].

7 In CA/CCA 59/2017 ("**CCA 59**"), Mr Roslan appealed against the decision in CM 40. Similarly, Mr Pausi appealed in CA/CCA 26/2018 ("**CCA 26**"). Both appeals were dismissed on 26 September 2018. In dismissing the appeals, the Court of Appeal commented that "Mr Roslan's evidence kept changing with the times despite his claim each time that he wanted to come clean and to speak the truth". The Court of Appeal affirmed the High Court's finding that Mr Roslan was not a courier within the meaning of s 33B of the MDA. The Court of Appeal also affirmed the High Court's conclusion that neither Mr Roslan nor Mr Pausi succeeded in proving that they suffered from abnormality of mind (also one of the conditions for resentencing).

8 Mr Roslan's petition to the President for clemency was rejected on 13 September 2019. As will be explained subsequently in this judgment, Mr Roslan is now asking for time to lodge a "fresh" petition to the President.

9 Mr Roslan and Mr Pausi next applied in CA/CM 6/2022 under s 394H of the Criminal Procedure Code 2010 (Cap 68, 2012 Rev Ed) to the Court of Appeal to review its decision on resentencing in CCA 59 and CCA 26 respectively. This application was dismissed on 15 February 2022.

10 In CA/CM 48/2023, Mr Roslan applied again under s 394H of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "**CPC**") for the Court of

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Appeal to review its decision in CCA 59. Similarly, Mr Pausi applied in CA/CM 22/2023 for the Court of Appeal to review its decision in CCA 10 dismissing his appeal against conviction and sentence. These applications, along with several applications by other PACPs, were dismissed on 1 August 2024: *Pausi bin Jefridin v Public Prosecutor and other matters* [2024] 1 SLR 1127.

11 On 2 July 2021, a group of 13 inmates, including Mr Roslan, filed HC/OS 664/2021 ("**OS 664**"), an application under O 53 r 1 of the Rules of Court (Cap 322, R5, 2014 Rev Ed). Among other things, Mr Roslan sought a declaration that the Attorney General acted unlawfully when the Attorney-General requested Mr Roslan's personal correspondence without his consent. Leave was granted for OS 664 to be withdrawn on 28 October 2021: *Syed Suhail bin Syed Zin and others v Attorney-General* [2022] 5 SLR 93 at [5].

12 Together with 16 other inmates, Mr Roslan then filed HC/OS 825/2021 ("**OS 825**") on 13 August 2021 against the Attorney-General and against officers in the Central Narcotics Bureau (the "**CNB**"). In OS 825, the applicants sought declaratory relief, alleging discrimination against them by reason of their ethnicity and for violation of their rights under Arts 9(1) and 12(1). OS 825 was dismissed on 2 December 2021: *Syed Suhail bin Syed Zin and others v Attorney-General* [2022] 4 SLR 934 at [107].

13 On 11 October 2021, Mr Roslan, as part of a group of 17 PACPs, filed an application in HC/OS 1025/2021 ("**OS 1025**") against the Attorney-General for permission to apply for an order of committal for contempt of court against the Minister for Law and Home Affairs, Mr K Shanmugam. OS 1025 was struck out on 16 November 2021.

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14 Mr Roslan and Mr Pausi were originally scheduled for execution on 16 February 2022. On 15 February 2022, they filed HC/OS 139/2022 ("**OS 139**") seeking, among other things, declarations that their execution would be in breach of their rights under Arts 9(1) and 12(1). OS 139 was dismissed on 16 February 2022.

15 Mr Roslan and Mr Pausi then filed an appeal in CA/CA 6/2022. They were granted an interim stay of execution pending the hearing of the appeal. The appeal was dismissed the same day on 16 February 2022: *Roslan bin Bakar and others v Public Prosecutor and another appeal* [2022] SGCA 20 at [4].

16 On that same day, Mr Roslan and Mr Pausi filed HC/OS 149/2022 ("**OS 149**") for declarations that the death penalty for drug offences under the MDA is unconstitutional for being in breach of Arts 9(1) and 12(1) of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "**Constitution**"). OS 149 was dismissed on 16 March 2022.

17 On 25 February 2022, Mr Roslan and 12 other PACPs filed HC/OS 188/2022 ("**OS 188**"). OS 188 was an application seeking orders against the Attorney-General for the alleged improper handling of the PACPs' correspondence. On 1 July 2022, OS 188 was dismissed, save for nominal damages awarded to three of the plaintiffs (which did not include Mr Roslan). In CA/CA 30/2024 ("**CA 30**"), the applicants in OS 188 appealed against the entirety of the Judge's decision.

18 On 11 October 2024, in allowing the appeal partially in CA 30, the Court of Appeal granted the declarations that the Attorney-General's Chambers (the "**AGC**") and the Singapore Prison Services (the "**SPS**") had acted

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unlawfully by requesting and by disclosing the appellants' correspondence. This court also found that the AGC and SPS acted in breach of confidence by the disclosure and retention of the appellants' correspondence. However, the award of nominal damages was affirmed: *Syed Suhail bin Syed Zin and others v Attorney-General* [2024] SGCA 39.

19 In HC/OC 166/2022 ("**OC 166**"), 24 PACPs (including Mr Roslan and Mr Pausi) challenged the constitutionality of a court's power to order costs in criminal proceedings. This was struck out on 3 August 2022. An appeal against this decision was dismissed by the Court of Appeal on 4 August 2022 in CA/CA 31/2022: *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 at [52].

20 On 26 September 2023, Mr Roslan and Mr Pausi, together with 36 other inmates, filed HC/OA 987/2023 ("**OA 987**"), seeking declarations that two provisions that were to be introduced by s 2(*b*) of the Post-appeal Applications in Capital Cases Act 2022 (No. 41 of 2022) in the Supreme Court Judicature Act 1969 (2020 Rev Ed) ("**SCJA**") – s 60G(7)(*d*) and s 60G(8) – were void for being inconsistent with Arts 9 and 12 of the Constitution. OA 987 was struck out on 5 December 2023: *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 4 SLR 331 at [65]. An appeal against this decision in CA/CA 1/2024 was dismissed by the Court of Appeal on 27 March 2024: *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 1 SLR 414 at [9].

21 On 28 March 2024, a group of 36 inmates (including Mr Roslan and Mr Pausi) filed HC/OA 306/2024 ("**OA 306**"). This was an application for a declaration that the policy of the Legal Aid Scheme for Capital Offences ("LASCO") Assignment Panel not to assign counsel for any post-appeal

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application was inconsistent with Art 9 of the Constitution and for an order for damages. OA 306 was struck out on 20 May 2024: *Iskandar bin Rahmat and others v Attorney-General* [2024] SGHC 122 at [43]. Mr Roslan's appeal against this decision was dismissed on 9 September 2024.

22 Finally, on 19 September 2024, a group of 31 PACPs (including Mr Roslan) applied in HC/OA 972/2024 ("**OA 972**") for declarations that ss 60G(7)(*d*), 60G(8), 60H(6) and 60I(1) of the SCJA and s 313(2) of the CPC are void for being inconsistent with Arts 9 and 12 of the Constitution. These provisions were introduced by the Post-appeal Applications in Capital Cases Act 2022 (Act 41 of 2022) (the "**PACC Act**"). The Attorney-General filed HC/SUM 2898/2024 ("**SUM 2898**") to strike out OA 972. As at the date of this judgment, SUM 2898 is fixed for hearing on 20 January 2025.

23 On 25 October 2024, the President of the Republic of Singapore issued a new order for Mr Roslan and Mr Pausi to be executed on 15 November 2024 pursuant to s 313(1)(*f*) of the CPC. The Warrants of Execution were issued on 1 November 2024 pursuant to s 313(1)(*g*) of the CPC. On 11 November 2024, Mr Roslan was informed of the date of execution. On 13 November 2024, Mr Roslan filed the present application. Mr Pausi has not filed any application at the time of this judgment.

24 On the same day, Mr Roslan wrote a letter to the President to seek a respite order on the scheduled execution on the ground that he wished to make a fresh application for clemency and needed proper legal advice. This was on the "unprecedented basis" that the Court of Appeal had found that the actions of the AGC and SPS violated his legal and constitutional rights. He also stated that he required legal advice on the potential conflict of interest arising from the

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fact that the parties advising the President on the clemency petition are the same parties who committed the unlawful acts found by the Court.

25 As directed by the Court, the Attorney-General's Chambers filed the respondent's submissions by 11am today. The respondent did not file any affidavit in reply.

The procedural law

26 Section 2 of the PACC Act introduced new provisions in the SCJA, namely ss 60F–60M of the SCJA, which set out the procedure for PACC applications. Pursuant to s 60G(1) of the SCJA, an applicant is required to first apply for and obtain permission from the Court of Appeal to make a PACC application. A PACC application is defined in s 60F of the SCJA to mean any application (not being a review application within the meaning of s 394F of the CPC): (a) made by a PACP after the "relevant date"; and (b) which seeks a stay of the execution of the death sentence on the PACP or the determination of the application calls into question, or may call into question, the propriety of the conviction of, the imposition of the sentence of death on, or the carrying out of the sentence of death on, the PACP. The "relevant date" refers to, among other things, the date of dismissal of the appeal by the Court of Appeal in relation to the offence for which the sentence of death was imposed on the PACP. Here, the relevant date would be 17 March 2011 (see [3] above). As the present application is made after 17 March 2011 and seeks a stay of execution of Mr Roslan's death sentence, it amounts to an application for PACC permission.

27 Mr Roslan is self-represented. The applicable requirements for an application for permission to file a PACC under s 60G(1) of the SCJA are set out in O 24A r 2(4)(*b*) of the Rules of Court 2021 (2020 Rev Ed) (the "**ROC**")

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and para 129A of the Supreme Court Practice Directions (the "**SCPDs**"). Mr Roslan's affidavit in support of the present application does not comply strictly with the requirements set out in O 24A r 2(4)(*b*) of the ROC. His affidavit further does not comply with para 129A of the SCPDs because it does not exhibit a completed information sheet in Form B29A of Appendix B to the SCPDs.

28 However, I waive these procedural irregularities in view of the very short time frame before the scheduled date of execution tomorrow. I now consider Mr Roslan's application with his accompanying affidavit and written submissions and the Attorney-General's Chambers' submissions.

The parties' cases

Mr Roslan's Case

29 Mr Roslan seeks a stay of execution on the following five grounds:

(a) First, he has not had sufficient opportunity to seek advice and to prepare a fresh clemency petition to the President arising from the declarations awarded to him in CA 30 ("**Ground 1**").

(b) Second, the reduced renotification period policy (the "**Reduced Notice Period**") in which he gets only four days' notice before his execution, instead of the usual seven days, is a violation of his Arts 9 and 12 rights under the Constitution as it impedes his ability to properly bring an application for a stay of execution ("**Ground 2**").

(c) Third, the Reduced Notice Period is legally unreasonable, given that his previous notice of execution was issued over 2 years and 10

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months ago on 9 February 2022 and is further inconsistent with his Art 12 rights ("**Ground 3**").

(d) Fourth, he has an ongoing complaint to the Council of the Law Society against his former counsel, Mr Ong Ying Ping of Ong Ying Ping ESQ, in respect of the handling of CM 48 ("**Ground 4**").

(e) Finally, he is a party in OA 972, an ongoing proceeding challenging the constitutionality of the PACC Act that effectively determines his rights in respect of his application for PACC permission that is before the court ("**Ground 5**").

The Attorney-General's Case

Ground 1

30 Mr Roslan has lodged no less than five previous petitions for clemency. They were all rejected by the President.

31 Art 22P of the Constitution prescribes the procedure on the grant of pardon by the President. As observed by the Court of Appeal in *Yong Vui Kong v Attorney-General [2011] 2 SLR 1189* at [114], it is notable that Art 22P(2) does not provide for any right on the part of the offender in a death sentence case to file a clemency petition. It is nonetheless an established procedure in death sentence cases for SPS to ask the offender (through his counsel) to file a clemency petition, if he wishes, within three months of his conviction (or at the conclusion of his appeal against conviction and/or sentence, as the case may be).

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32 Under Art 22P, an offender does not possess a legal right to file a clemency petition, what more a legal right to file further petitions. The entire foundation of Ground 1 is premised on an erroneous assumption that Mr Roslan has a right at law to file a further petition for clemency. This is simply not the case. The Court of Appeal held that none of the correspondence disclosed by SPS to AGC could potentially have affected Mr Roslan's criminal proceedings. Further, Mr Roslan's position is entirely different from that of the applicant in *Pannir Selvam a/l Pranthaman v Public Prosecutor* CA/CM 6/2019 ("***Pannir Selvam***").

Ground 2

33 The Reduced Notice Period does not affect Mr Roslan's conviction and sentence in any way. The law does not prescribe any notice period to be given to a PACP for his scheduled execution. In any case, Mr Roslan had more than enough time to sort out his affairs and the Reduced Notice Period has not impeded his ability to file the present application with substantive legal arguments and research. There was no breach of Mr Roslan's rights under Arts 9 and 12 of the Constitution.

Ground 3

34 Mr Roslan has not provided any details about how he has been impeded by the Reduced Notice Period in addressing matters that he said had arisen in the period since the notice of his original date of execution. He had more than two years in the intervening period to sort out his personal matters and to commune with his loved ones. It has been more than a decade since his appeal against conviction and sentence was dismissed by the Court of Appeal.

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35 The Reduced Notice Period is not overinclusive because the timing of the initial notice is irrelevant. Once a PACP has been notified of the date of his execution, he must know that he ought to attend to any final matters. It is unclear whether the doctrine of substantive legitimate expectations applies in Singapore but, in any case, the Ministry of Home Affairs ("MHA") has never made an unequivocal or unqualified representation to PACPs that they would always receive a notification period of seven days. Mr Roslan has also not shown any detrimental reliance.

Ground 4

36 Mr Roslan's reliance on the complaint against his former counsel is an abuse of process, completely unmeritorious and an afterthought. Further, the complaint is not a relevant proceeding that warrants a stay of execution.

Ground 5

37 Similarly, OA 972 is not a relevant proceeding that warrants a stay of execution.

Applicable legal principles

38 The matters that the Court of Appeal must consider in deciding whether to grant permission to file a PACC are set out in s 60G(7) of the SCJA, which states as follows:

> **Application for permission to make PACC application**
>
> …
>
> (7) In deciding whether or not to grant an application for PACC permission, the Court of Appeal must consider the following matters:

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> (a) whether the PACC application to be made is based on material (being evidence or legal arguments) that, even with reasonable diligence, could not have been adduced in court before the relevant date;
>
> (b) whether there was any delay in filing the application for PACC permission after the PACP or counsel for the PACP obtained the material mentioned in paragraph (a) and the reasons for the delay;
>
> (c) whether subsection (4) is complied with;
>
> (d) whether the PACC application to be made has a reasonable prospect of success.

39 Section 60G(7)(*c*) refers to whether the applicant in a PACC application for permission has complied with the requirement in s 60G(4) that he or she must file written submissions in support of the application and such other documents as are prescribed in O 24A r 2 of the ROC, within such periods as are prescribed in O 24A r 2 of the ROC. The considerations in s 60G(7) of the SCJA mirror the considerations that the appellate court must consider under s 394H(6A) of the CPC in deciding whether or not to grant an application for permission to make a review application: *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] SGCA 38 ("***Azwan***").

The decision of the court

Ground 1

40 In *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("***Syed Suhail (Clemency)***") at [47], the Court of Appeal stated:

> Hence, the pronouncement of the death sentence by a court means that the eventual deprivation of the prisoner's life would not be a violation of Art 9(1), *provided that it is carried out in accordance with law*. This would first require an appeal to the Court of Appeal or (if the offender does not file an appeal) a review by the Court of Appeal under s 394B of the CPC, and the denial of clemency. Finally, as this court held in *Pannir Selvam*

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> *a/l Pranthaman v Public Prosecutor* CA/CM 6/2019 ("*Pannir Selvam*"), a prisoner ought to have a reasonable opportunity to consider and take advice on whether he had any grounds on which to challenge the clemency decision. In *Pannir Selvam*, the applicant was informed of the rejection of his clemency petition at the same time as his scheduled date of execution, which was just one week away. We considered this period of time to be inadequate. We refer to the passage of an adequate period of time as envisaged in Pannir Selvam as the "*Pannir Selvam* period".

41 Mr Roslan relies on the "*Pannir Selvam* period". In *Pannir Selvam a/l Pranthaman v Public Prosecutor* CA/CM 6/2019 ("***Pannir Selvam***"), the Court said:

> The applicant files this application for a stay of execution on the ground that he wishes to file a fresh application to impugn the clemency process. There are extremely narrow grounds upon which the clemency process may be so impugned. However, in our judgment, the applicant ought to have a reasonable opportunity to take advice on whether he can mount a successful challenge. In the way in which matters have transpired, he was notified of both the rejection of his clemency petition and the scheduled date of the execution of his sentence just one week in advance. As the learned DPP Mr Francis Ng candidly conceded, this did not leave the applicant much time to obtain advice on what, if any, options he might have had to bring an application to challenge the execution of the sentence. Mr Too took instructions to represent the applicant just today and to be fair to him we could not expect him to be in a position to mount a fully developed argument. Nor was there anything to suggest that the applicant had acted with undue delay or in abuse of the process of the court. In the circumstances we think the execution should be stayed until further order. …

42 It is relevant that the court in *Pannir Selvam* did not merely look at the absolute amount of time between the notice of the applicant's clemency petition being rejected and his scheduled date of execution. The court further considered that there was nothing to suggest that the applicant there had acted with undue delay or in abuse of the process of the court.

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43 In the present case, the Court of Appeal gave the relevant declarations on 11 October 2024. Mr Roslan's then counsel, Mr Ong Ying Ping, wrote to him on 16 October 2024 to advise that "[i]t is anticipated that Notice of Execution will soon be given". Mr Roslan did not appear to have taken any action in respect of a fresh petition for clemency until after he was notified of the date of execution. As stated earlier, on 13 November 2024, he filed the present application and wrote to the President seeking a respite order. There was therefore inaction for close to a period of one month from 16 October to 13 November 2024 despite the warning from his former counsel about the imminence of execution. In fact, in one of the messages exhibited in Mr Roslan's affidavit, Mr Ong Ying Ping mentioned to Mr Roslan's sister as early as 4 August 2024 that "Meantime, you can all consider writing a new petition for pardon by the president in light of the breach of confidentiality in the communication".

44 The speed with which the present application and the detailed affidavit and submissions on fact and law were filed by Mr Roslan indicate clearly that he had no lack of legal advice in the background and that the papers were ready for filing all along but were held back deliberately to create an artificial crisis of time once notice of execution was given. Therefore, bearing in mind s 60G(7) of the SCJA, there was obviously intentional delay in filing the present application. In any case, Ground 1 does not have a reasonable prospect of success.

Ground 2

45 Mr Roslan's second ground rests on two arguments. First, the Reduced Notice Period is in violation of the *Pannir Selvam* period. Second, the Reduced

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Notice Period impedes the ability of PACPs to obtain advice on an application for a stay of execution on the arbitrary basis that they had received a notice of execution previously, regardless of whether they have fresh grounds to bring such an application.

46 The Court in *Pannir Selvam* considered that there would not have been adequate time for the applicant there to obtain advice because he was informed about the rejection of his clemency petition and was given notice of his execution at the same time and the date of execution was one week away. In contrast, Mr Roslan knew that his initial clemency petition was rejected since 13 September 2019.

47 The Reduced Notice Period does not operate arbitrarily so as to contravene Arts 9(1) and 12(1) of the Constitution. The purpose of the Reduced Notice Period is to provide PACPs an opportunity to attend to any final matters before their execution. Prior to June 2024, the practice was that all PACPs would get at least a seven-day notification period even if it was a renotification of an execution that was rescheduled. After the MHA reviewed this practice, it was determined that if a PACP had been notified previously and had their execution stayed or halted by respite past the halfway mark of their notification period, the PACP would be given the Reduced Notice Period. In practice, every PACP will still receive at least seven days in total to settle their affairs: see *Azwan* at [12].

48 The Reduced Notice Period has a rational relation to the object of giving advanced notice of the date of execution to enable the PACPs attending to any final matters before their execution. The PACPs continue to receive at least seven days in total to settle their matters. In any case, PACPs know that their

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execution is imminent once they have exhausted their right of appeal and have been unsuccessful in any petition for clemency. It is not as if they did not know they will be executed in due course until the day notice of execution is given. In Mr Roslan's case, he was aware of his execution more than two years ago but that was delayed as shown by the history of proceedings set out earlier. Ground 2 therefore has no merit at all.

Ground 3

49 Ground 3 is related to Ground 2. Ground 3 argues that it is unreasonable to subject a PACP in Mr Roslan's position to the Reduced Notice Period because in the time that has elapsed since the first notice of execution, personal and estate matters would have arisen and he should be afforded the full seven days to address them. It is submitted that the failure to take into account the relevant consideration of when the prisoner received his previous notice renders this policy illegal. It is also submitted that this policy is over-inclusive because it includes PACPs who require additional time to settle their affairs. Finally, PACPs have formed a legitimate expectation that they would be afforded at least seven days' notice of execution.

50 I do not agree that the time which has elapsed after the PACPs receive their initial notice of execution is relevant to the next notice of execution. As mentioned above, Mr Roslan knew about his imminent execution more than two years ago and had ample time to settle whatever personal or family matter that needed his attention. He used that time to challenge his conviction and sentence directly or indirectly on many occasions. I do not agree that PACPs have a legitimate expectation that they would be given at least seven days' notice of execution. The MHA has never made any unequivocal or unqualified

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representation about the seven days' notice period. Accordingly, Ground 3 also has no reasonable prospect of success.

Ground 4

51 Mr Roslan argues that his complaint against his former counsel, Mr Ong Ying Ping, to the Law Society of Singapore for his conduct in CM 48 was a relevant pending proceeding. Accordingly, his scheduled execution should be stayed until the full and final disposal of the disciplinary proceedings related to the complaint.

52 The Court of Appeal said in *Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 ("***Datchinamurthy***"):

> 40 All that is ***not*** to say, however, that where a prisoner awaiting capital punishment has a pending legal proceeding, the decision to schedule him for execution would *automatically* attract the protection of Art 12(1) (and consequently, a stay of execution) on that basis. In the absence of the proceeding being "relevant", having regard to the nature of the executive action – *ie*, the due scheduling of a prisoner's execution following his conviction for a capital offence – a prisoner with a pending proceeding would be equally situated with other prisoners without such proceedings. Put another way, the fact that a prisoner awaiting capital punishment has a pending (albeit not relevant) proceeding but was nevertheless scheduled for execution is not differential treatment which requires justification (see *Syed Suhail (CA)* at [61]). In relation to such prisoners awaiting capital punishment, the position would be as we had held in *Syed Suhail (CA)*: they might *prima facie* be regarded as being equally situated once they had been denied clemency, and equal treatment entailed that prisoners whose executions arose for scheduling should be executed in the order in which they were sentenced to death (see *Syed Suhail (CA)* at [64] and [72]). As we had acknowledged in *Lim Meng Suang (CA)*, while it is theoretically desirable to achieve equality, that normative ideal faces the factual reality that inequality is "an inevitable part of daily life"; and the question really is one of ascertaining the situations in which such a level of equality should be *legally* mandated (at [61]). In the context, then, of the

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> present inquiry, it should be borne in mind that every application is fact-centric, and whether a prisoner has a relevant proceeding would ultimately depend on the precise facts and circumstances concerned.
>
> 41 We make a final point. In the present case, it was significant that OS 188 appeared to be a proceeding brought in good faith, that was filed without notice of the date of the scheduled execution, and which was ongoing (a point that was also noted by the Judge in the Judgment at [33]). We emphasise the rather unusual context of the present appeal: OS 188 arose out of this court's observations in *Gobi a/l Avedian* concerning the unauthorised disclosure of the prisoner's correspondence to the AGC, which has since been addressed via safeguards adopted by the AGC and SPS. This was therefore a state of affairs that was unlikely to recur. Conversely, in our view, most pending proceedings found to be relevant would be disposal or forfeiture proceedings, as contemplated by MHA's affidavit in *Syed Suhail (CA)*. At the same time, actions brought at an eleventh hour and without merit in fact and/or law could lead to the inference that they were filed not with a genuine intention to seek relief, but as a "stopgap" measure to delay the carrying out of a sentence imposed on an offender (see the decision of this court in *Nagaenthran a/l K Dharmalingam v Attorney-General and another matter* [2022] SGCA 26 at [65]). Suffice it to state that such actions (which was not the situation here) would *not* provide any basis for a stay of execution, and would be dealt with accordingly as an abuse of process.

53 As can be seen from above-mentioned passage, the mere fact of a pending proceeding does not necessarily constitute a "relevant" pending proceeding that warrants protection under Art 12(1). Mr Roslan's complaint relates to his solicitor's conduct up to 1 August 2024. The complaint, however, was submitted more than three months later on 7 November 2024. Mr Roslan's affidavit shows that as recently as 16 October 2024, Mr Ong Ying Ping was still acting as his counsel in CA 30. This suggests strongly that the complaint about Mr Ong Ying Ping having misled Mr Roslan and the Court of Appeal was intended to be a "stopgap" measure to delay the carrying out of the sentence. Even if Mr Roslan's former counsel is sanctioned subsequently in the disciplinary proceedings, that will not affect the integrity of Mr Roslan's

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conviction and sentence in any way. Ground 4 therefore has no reasonable prospect of success.

Ground 5

54 Mr Roslan's final ground rests on the pending proceedings in OA 972. He submits that the scheduled execution date would deprive him of the constitutional remedies sought in OA 972. Further, OA 972 seeks to impugn the very statutory framework now governing applications for stays of execution and is thereby relevant to his sentence.

55 As summarised in *Sulaiman bin Jumari v Public Prosecutor* [2024] SGCA 40 ("***Sulaiman***") at [28], OS 972 concerns the provisions that relate to the requirement that the Court of Appeal considers the reasonable prospect of success of a PACC application in deciding whether to grant PACC permission, the power to deal summarily with an application for PACC permission or a PACC application, the procedure for making a PACC application where there is a pending PACC application and the fact that a warrant of execution may be carried out notwithstanding an application for permission to apply for a stay of execution or an application for a stay of execution, in circumstances where the PACP was previously found by the Court of Appeal to have abused the process of the court.

56 In *Azwan* and in *Sulaiman*, I held that OA 972 had no bearing on the respective applicants' conviction and sentence: see *Sulaiman* at [28]–[31] and *Azwan* at [18]–[22]. The same reasoning applies here. The challenge in OA 972 is a constitutional challenge in respect of specific provisions in the SCJA and the CPC. Those provisions came into force long after Mr Roslan's conviction and sentencing. They cannot impact his case adversely. In any case, Mr Roslan

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has not mentioned what grounds he has to impugn his conviction or sentence that he could not put forward because of the challenged provisions. In fact, at a case management conference in OA 972 held on 24 September 2024, Mr Roslan said that he was not challenging his conviction or sentence in OA 972.

Conclusion

57 There is clearly no basis to grant Mr Roslan's present application for permission to file a PACC application and no justification to stay the scheduled execution. Having considered all the submissions filed in this application, I dismiss this application summarily without the need for an oral hearing pursuant to s 60G(8) of the SCJA.

Tay Yong Kwang
Justice of the Court of Appeal

The applicant in person;
Christina Koh and Daphne Lim (Attorney-General's Chambers) for the respondent.

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