IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 6

Court of Appeal / Criminal Motion No 3 of 2025

Between

Hamzah bin Ibrahim

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Criminal review — Application under s 394H(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) for permission to make review application]

TABLE OF CONTENTS

Hamzah bin Ibrahim
v
Public Prosecutor

[2025] SGCA 6

Court of Appeal — Criminal Motion No 3 of 2025
Tay Yong Kwang JCA
7 and 10 February 2025

14 February 2025

Tay Yong Kwang JCA:

1 This is an application by Mr Hamzah bin Ibrahim ("Mr Hamzah"), a prisoner awaiting capital punishment. He is seeking permission to make a review application pursuant to s 394H of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"). This application is placed before me as a single Judge sitting in the Court of Appeal pursuant to s 394H(6)(*a*) of the CPC.

Facts & History of Proceedings

The trial

2 Mr Hamzah was charged with having 26.29g of diamorphine (the "Drugs") in his possession for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). He had collected the Drugs contained in two packets from Mr Farid bin Sudi ("Mr Farid") in the afternoon of 20 December 2014 while they were in

a car driven by Mr Farid. Mdm Tika Pesik ("Mdm Pesik") had made arrangements for Mr Farid to collect the Drugs and to deliver them to Mr Hamzah.

3 Mr Hamzah was tried jointly with Mr Farid and Mdm Pesik in the High Court. Mr Hamzah admitted that he had arranged with Mdm Pesik to purchase drugs. In his testimony, he recounted the events of the drug transaction with Mr Farid. This was consistent with the contents of his long statements recorded in the course of investigations, which included admissions that he took delivery of the Drugs while in the car with Mr Farid and that he knew the two packets contained the Drugs. Mr Hamzah did not offer any substantive defence: see *Public Prosecutor v Muhammad Farid bin Sudi and others* [2017] SGHC 228 ("Judgment") at [35].

4 Mr Farid testified that he was recruited by Mdm Pesik to deliver drugs for her: Judgment at [34]. Mdm Pesik, who was arrested many months after the drug transaction, denied any involvement. She claimed to have been "played out" by her then-lover and further claimed that Mr Farid and Mr Hamzah must have colluded to implicate her falsely: Judgment at [36].

5 The trial Judge (the "Judge") convicted all three accused persons. The Judge noted that Mr Hamzah did not raise any substantive defence to the charge against him in his closing submissions. In any event, the necessary elements of the charge were made out: Judgment at [67]–[77]:

(a) Mr Hamzah was in possession of the Drugs, which he admitted to in his long statements and in his testimony in court.

(b) Mr Hamzah knew the nature of the Drugs, which he admitted to in his long statements and in his testimony in court.

(c) Mr Hamzah was in possession of the Drugs for the purpose of sale, which he admitted to in his long statements and in his testimony in court.

6 The Judge passed the mandatory death penalty on Mr Hamzah. Although Mr Hamzah was given a Certificate of Substantive Assistance ("CSA") under s 33B(2)(*a*) of the MDA, he did not qualify for the alternative sentencing regime as he was not found to be a courier. It was evident that Mr Hamzah's purpose after taking delivery of the Drugs was to sell the Drugs: Judgment at [88]–[89]. Further, while Mr Hamzah's counsel had submitted that his role was limited to that of a courier, he conceded in oral submissions that such a submission would be unsustainable in the light of all the evidence: Judgment at [88].

7 Mr Farid qualified for the alternative sentencing regime under s 33B(2) of the MDA and was sentenced to life imprisonment and 15 strokes of the cane. Mdm Pesik was sentenced to suffer death as she was neither found to be a courier nor issued a CSA.

The appeal

8 Mr Hamzah appealed to the Court of Appeal in CA/CCA 26/2017 ("CCA 26"). While his notice of appeal in CCA 26 stated that he was appealing against both his conviction and sentence, his counsel confirmed that he was pursuing his appeal against sentence only and not against the conviction. Mdm Pesik appealed against her conviction and sentence in CA/CCA 29/2017.

9 Both appeals were heard together and dismissed by the Court of Appeal (comprising Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Tay Yong Kwang JA) on 20 August 2018. In delivering the oral judgment of the

court, Sundaresh Menon CJ held that the evidence Mr Hamzah had given in his statements, which his counsel confirmed to be true and accurate, revealed that Mr Hamzah had previously taken delivery of drugs and delivered them to several others. On the day in question, he had taken delivery of the Drugs intending to sell them to others. Accordingly, Mr Hamzah was a trafficker who did not come within the definition of a courier. On this basis, there was no ground on which the appeal against sentence could stand. Apart from this, there was other evidence that the Judge had relied on to arrive at her findings. The Court of Appeal noted that the Judge had analysed the facts carefully. As the Court of Appeal was satisfied that there was no merit in both Mr Hamzah's and Mdm Pesik's appeals, they were dismissed accordingly.

10 On 29 November 2018, Mr Hamzah, through his counsel, filed a Petition of Clemency to the President. On 5 July 2019, after due consideration and on the advice of the Cabinet, the petition was rejected.

Post-appeal applications

11 Since the dismissal of CCA 26, Mr Hamzah has made various post-appeal applications. These are set out below.

12 On 1 October 2020, Mr Hamzah and ten other prisoners filed HC/OS 975/2020 ("OS 975") seeking pre-action discovery and pre-action interrogatories against the Attorney-General (the "AG") and the Superintendent of Changi Prison (Institution A1). The background to this is that correspondence belonging to Mr Hamzah (along with those of other prisoners) had been forwarded by the Singapore Prison Service (the "SPS") to the Attorney-General's Chambers (the "AGC"). OS 975 was dismissed by the High Court on 16 March 2021: see *Syed Suhail bin Syed Zin and others v Attorney-General*

and another [2021] 4 SLR 698 at [60]. There was no appeal against the decision in OS 975.

13 On 2 July 2021, Mr Hamzah joined 12 other prisoners in filing HC/OS 664/2021 ("OS 664"), an application under O 53 r 1 of the Rules of Court (Cap 322, 2014 Rev Ed) for permission to commence judicial review proceedings. This was on the back of OS 975. OS 664 sought permission to bring an application for, among other reliefs, a declaration that the AG had acted unlawfully in requesting their personal correspondence from the SPS without their consent and that the SPS and the AG had breached confidence in respect of some of the prisoners' personal correspondence. On 28 October 2021, the High Court granted permission for OS 664 to be withdrawn: see *Syed Suhail bin Syed Zin and others v Attorney-General* [2022] 5 SLR 93 at [5].

14 On 13 August 2021, Mr Hamzah, together with16 other prisoners, filed HC/OS 825/2021 ("OS 825") against the AG and officers in the Central Narcotics Bureau (the "CNB"). 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) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) (the "Constitution"). They also alleged that the AG had exceeded his powers in prosecuting them for capital drug offences. OS 825 was dismissed by the High Court on 2 December 2021: see *Syed Suhail bin Syed Zin and others v Attorney-General* [2022] 4 SLR 934 at [107]. No appeal was filed against this dismissal.

15 On 11 October 2021, Mr Hamzah and the same 16 prisoners who filed OS 825 filed an application in HC/OS 1025/2021 ("OS 1025") against the AG for permission to commence committal proceedings against the Minister for

Law and Home Affairs. OS 1025 was struck out in its entirety by the High Court on 16 November 2021. No appeal was filed against this decision.

16 On 25 February 2022, Mr Hamzah and 12 other prisoners filed HC/OS 188/2022 ("OS 188") seeking orders against the AG for the alleged improper handling of their personal correspondence. On 1 July 2022, OS 188 was dismissed except that nominal damages were awarded to three of the applicants. Mr Hamzah was not one of the three.

17 On 29 July 2022, the applicants in OS 188 filed an appeal in CA/CA 30/2022 ("CA 30"). On 11 October 2024, CA 30 was allowed in part, with the Court of Appeal granting some of the declaratory relief sought: see *Syed Suhail bin Syed Zin and others v Attorney-General* [2024] 2 SLR 588 ("*Syed Suhail (2024)*") at [100]. As it emerged during the course of that appeal that the appellants there were also seeking to impugn the validity of their convictions, the Court of Appeal gave them permission to file criminal motions seeking relief under the criminal law to the extent that such motions arose from the disclosed correspondence: *Syed Suhail (2024)* at [23]. Mr Hamzah did not file any criminal motion.

18 Instead, on 1 August 2022, Mr Hamzah and 23 other prisoners filed HC/OC 166/2022 ("OC 166") against the AG and the Government of Singapore to challenge the constitutionality of the court's power to order costs in criminal proceedings. OC 166 was struck out in its entirety by the High Court on 3 August 2022. On the same day, the same 24 applicants filed an appeal in CA/CA 31/2022 ("CA 31") against the striking out. CA 31 was dismissed by the Court of Appeal on 4 August 2022: *see Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 at [52].

19 On 26 September 2023, Mr Hamzah and 35 other prisoners filed HC/OA 987/2023 ("OA 987"), seeking declarations that two provisions to be introduced by s 2(*b*) of the Post-appeal Applications in Capital Cases Act 2022 (No. 41 of 2022), namely ss 60G(7)(*d*) and 60G(8) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed), were void for being inconsistent with Arts 9 and 12 of the Constitution. OA 987 was struck out on 5 December 2023: see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 4 SLR 331 at [65]. The appeal against this decision in CA/CA 1/2024 was dismissed on 27 March 2024: see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 1 SLR 414 at [9].

The present application

Mr Hamzah's case

20 In the present application, Mr Hamzah seeks permission to make a review application under s 394H of the CPC to "cure the miscarriage of justice in his case". He asks the court to order a retrial so that he would "have a fair trial in which he has the opportunity to carry out defence for himself". His application is premised on two grounds:

(a) **Ground 1**: Mr Hamzah had been labouring under a promise made by CNB officers (unidentified and unnamed) and/or the Prosecution that he would receive a non-capital sentence if he co-operated in the investigations and/or assisted the authorities in disrupting drug trafficking activities (the "Promise"). This undue influence had operated on his mind when he gave various statements to the CNB and throughout the earlier court proceedings. He submits that his statements and his testimony could not be deemed to be voluntary

and would therefore be inadmissible. The net result of this was that his conviction and sentence were unsafe and demonstrably wrong.

(b) **Ground 2**: The alternative sentencing regime in s 33B(2) of the MDA is inconsistent with the presumption of innocence. According to Mr Hamzah, "an accused person who attempts to meet the criteria under s 33(2)(*b*) of the MDA after arrest may be [put] in a position where the constitutional rule of the presumption of innocence will not be upheld". The manner in which he conducted his defence was tainted by the Promise. If not for the Promise, he could have run a defence which would not have rendered the courier requirement "absurd or obviously untenable".

The Prosecution's case

21 The Prosecution submits that Mr Hamzah's arguments are "entirely unmeritorious". They hinge on a factual substratum which does not exist, namely that the Promise was made to Mr Hamzah. Mr Hamzah has failed to demonstrate any credible grounds to challenge the Judge's findings and her decision on conviction and sentence as well as the dismissal of his appeal in CCA 26. His intended review application has no reasonable prospect of success and there is no basis to grant him permission to make a review application.

The applicable law

Considerations for an application for permission to make a review application

22 In deciding whether to grant an application for permission to make a review application, the court must consider the following matters stipulated under s 394H(6A) of the CPC:

(a) whether the conditions or the requirements in ss 394G, 394J and 394K of the CPC are satisfied;

(b) whether there was any delay in filing the application for permission after the applicant or counsel for the applicant had obtained the material mentioned in s 394J(2) of the CPC and the reasons for the delay;

(c) whether s 394H(3) of the CPC – that the applicant must file written submissions in support of the application and such other documents as prescribed in the Criminal Procedure Rules 2018, within the prescribed periods – is complied with; and

(d) whether the review application to be made has a reasonable prospect of success.

23 For permission to be granted, an applicant must show a "legitimate basis for the exercise of [the] court's power of review": see *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 at [17]. The material the applicant will be relying on in the review must be "almost certain" to satisfy the requirements under s 394J of the CPC: see *Roslan bin Bakar and others v Public Prosecutor* [2022] 1 SLR 1451 at [21], *Chander Kumar a/l Jayagaran v Public Prosecutor* [2023] SGCA 35 at [11] and *Pausi bin Jefridin v Public Prosecutor and other matters* [2024] 1 SLR 1127 at [57(a)].

24 Under s 394J(2) of the CPC, an applicant must satisfy the appellate court that "there is sufficient material (being evidence or legal arguments) to conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made". The elements of "sufficiency" and

"miscarriage of justice" are a *composite* requirement: see *Rahmat bin Karimon v Public Prosecutor* [2021] 2 SLR 860 ("*Rahmat*") at [22].

25 For the material to be "sufficient", the three requirements in ss 394J(3)(*a*)–394J(3)(*c*) of the CPC must be satisfied:

> (a) before the filing of the application for permission to make the review application, the material has not been canvassed at any stage of the proceedings in the criminal matter in respect of which the earlier decision was made;
>
> (b) the material could not have been adduced in court earlier even with reasonable diligence; and
>
> (c) the material is compelling, in that it is reliable, substantial, powerfully probative and capable of showing almost conclusively that there has been a miscarriage of justice in the said criminal matter.

26 The failure to satisfy *any* of the three requirements will result in a dismissal of the review application: see *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159 at [18].

27 Further, under s 394J(4) of the CPC, where the material which the applicant relies on consists of legal arguments, such material will only be "sufficient" if, in addition to the three requirements above, it is based on a change in the law that arose from any decision made by a court after the conclusion of all proceedings relating to the criminal matter in respect of which the earlier decision was made.

28 As for the requirement that there be a miscarriage of justice, the court must be satisfied of either of the following: s 394J(5) of the CPC:

(a) The earlier decision that is sought to be reopened is "demonstrably wrong": s 394J(5)(*a*) of the CPC. Where the earlier decision pertains to conviction, the court must find it apparent, based only on the evidence tendered in support of the review application and without any further inquiry, that there is a "powerful probability" and not just a "real possibility" that the decision is wrong: s 394J(6) of the CPC. Where the earlier decision pertains to sentence, the court must find that the decision was based on a fundamental misapprehension of the law or the facts, such that it was "blatantly wrong" on the face of the record: s 394J(7) of the CPC.

(b) The earlier decision is "tainted by fraud or a breach of the rules of natural justice, such that the integrity of the judicial process is compromised": s 394J(5)(*b*) of the CPC.

Summary dismissal of an application for permission to make a review application

29 Under s 394H(7) of the CPC, an application for permission to review may, without being set down for hearing, be dealt with summarily by a written order of the appellate court. Under s 394H(8) of the CPC, the appellate court must consider the matters in s 394H(6A) of the CPC and the applicant's written submissions (if any), and may, but is not required to, consider the respondent's written submissions (if any).

The decision of the Court

Ground 1: The Promise

30 Mr Hamzah alleged in his affidavit that the Promise was made to him. He stated that he "had been asked by one of the CNB IOs to assist the authority in disrupting drug trafficking activities", which he referred to as "the Important Question". He stated that as a result of the Important Question, he was "induced to give the statements to the CNB IO under the impression that I would be spared the death penalty if I cooperate with the CNB IO by giving the statements". Nowhere in his affidavit does he state that someone promised him a non-capital sentence. To the extent that this was his impression, it is settled that self-perceived inducements cannot amount to an inducement or promise within the meaning of s 258(3) of the CPC: see *Lu Lai Heng v Public Prosecutor* [1994] 1 SLR(R) 1037 at [19], in the context of s 122(5) of the Criminal Procedure Code (Cap 68, 1987 Rev Ed) which was effectively the predecessor of s 258(3) of the CPC. Further, in so far as the Important Question formed part of notifying Mr Hamzah of the requirements that would satisfy the alternative sentencing regime in s 33B(2) of the MDA, it is also clear that such notice would not amount to a threat, inducement of promise: see Explanation 2(*aa*) of s 258(3) of the CPC and *Jumadi bin Abdullah v Public Prosecutor and other appeals* [2022] 1 SLR 814 at [47].

31 In Mr Hamzah's written submissions, he set out the Promise in the following terms: "if the Applicant cooperated with their investigations: he will receive a punishment that is non-capital in nature". Further, "the promise made by the CNB officers that he would be spared the death penalty, was the constant operative on his mind". Mr Hamzah added subsequently in his written submissions that "both CNB and the Prosecution promised that the Applicant

that if he cooperated by supplying them with incriminating information, he will be spared the death penalty". He then elaborated on this statement by adding that he testified during the trial that CNB officer Muhammad Fardlie bin Ramlie told him through writing in a pocketbook that "if you cooperate, you will not be hanged".

32 The Prosecution had made it clear to the defence counsel before the trial that it took the position that Mr Hamzah was not a courier and so would not qualify for the alternative sentencing regime under the MDA. It must follow from this that if Mr Hamzah were convicted after the trial and if the trial Judge agreed with the Prosecution's position on the courier issue, the mandatory death penalty would have to be imposed.

33 Even if Mr Hamzah still had the mistaken belief at the start of the trial that he would not receive the death penalty if he cooperated by not challenging the admissibility of his statements, that belief could not have continued throughout the trial. There was a late challenge to the admissibility of the statements and an application was made by the defence counsel to recall the CNB officers involved before the Prosecution closed its case at the trial. One of the reasons given for the challenge was that Mr Hamzah had given his long statements after he was led to believe that if he cooperated substantively, he would not receive the death penalty. The Judge rejected the application at that stage but indicated that she would allow a fresh application to be made at the close of Mr Hamzah's case.

34 However, Mr Hamzah subsequently instructed his defence counsel to withdraw the application to challenge the admissibility of his statements and to withdraw any suggestion that the statements were made under an inducement. He affirmed in court that his statements were given voluntarily.

35 As mentioned earlier, Mr Hamzah elected not to pursue his appeal against conviction. This was so although the death penalty had been pronounced on him at the conclusion of his trial despite the alleged Promise. Moreover, he was represented by new defence counsel at the appeal before the Court of Appeal who must have advised him about the consequences of not challenging his conviction. He even confirmed through his new defence counsel that the evidence given by him in his statements was true and accurate.

36 In Mr Hamzah's written submissions, he stated that he wrote a letter to the Judge stating that his previous defence counsel convinced him not to challenge the Prosecution or defend himself at the trial. He stated further that his previous defence counsel suggested that if Mr Hamzah continued to cooperate with the Prosecution, the Prosecution would amend the capital charge to a non-capital one.

37 By the time the trial concluded, it would have been clear to Mr Hamzah that the Prosecution had breached the alleged assurance given to his former defence counsel or that his former defence counsel was mistaken about the Prosecution's stance. Nevertheless, Mr Hamzah chose not to appeal against his conviction.

Ground 2: Section 33B(2) of the MDA and the presumption of innocence

38 The relevant parts of s 33B of the MDA, as in force at the material time, state:

> **Discretion of court not to impose sentence of death in certain circumstances**
>
> 33B.—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and he is convicted thereof, the court —

> (a) may, if the person satisfies the requirements of subsection (2), instead of imposing the death penalty, sentence the person to imprisonment for life and, if the person is sentenced to life imprisonment, he shall also be sentenced to caning of not less than 15 strokes; or
>
> …
>
> (2) The requirements referred to in subsection (1)(*a*) are as follows:
>
> (*a*) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted —
>
> (i) to transporting, sending or delivering a controlled drug;
>
> (ii) to offering to transport, send or deliver a controlled drug;
>
> (iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
>
> (iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and
>
> (*b*) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

39 Mr Hamzah submitted that the presumption of innocence is breached by the operation of s 33B(2) of the MDA because it places accused persons in the invidious position of having to choose between providing substantive assistance and waiving any inconsistent defences at trial and raising those defences at the trial and compromising their assistance to the authorities. In this context, Mr Hamzah had opted for the former because of the Promise. He was thereby prevented from advancing his case at the trial that he was a courier and therefore eligible for the alternative sentencing regime.

40 I reject the submission that s 33B(2) of the MDA is inconsistent with the presumption of innocence.

41 Mr Hamzah cited the remarks of the High Court in *Public Prosecutor v Chum Tat Suan* [2014] 1 SLR 336 ("*Chum Tat Suan (HC)*") at [5]–[6] that an accused person would be "in a bind" if evidence relevant to whether he or she was a courier had to be adduced at the trial. This was echoed on appeal by the minority decision in *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 ("*Chum Tat Suan (CA)*") at [28], that an accused person whose primary defence was inherently inconsistent with the statutory relief of being a courier would be placed in an invidious position if he was made to raise this at the trial since it would undermine his primary defence.

42 The remarks that Mr Hamzah cited and relied on were rejected by the majority decision of the Court of Appeal in *Chum Tat Suan (CA)*. The majority decision explained that the purpose of the alternative sentencing regime is that if the accused person provides substantive assistance to the authorities and thereby obtains a CSA and is also found to be a courier, the court may decide not to impose the death penalty. While this gives the accused person the incentive to come clean, he or she does not have to avail himself or herself of this opportunity: *Chum Tat Suan (CA)* at [80]. Further, both the majority decision (at [78]) and the minority decision (at [31]) opined that it was possible for an accused person to run an exculpatory defence and yet give evidence to show that the accused person was in any event an unknowing courier. The Court of Appeal reiterated its position in *Prabagaran a/l Srivijayan v Public Prosecutor and other matters* [2017] 1 SLR 173 at [92] (citing *Chum Tat Suan (CA)* at [80]) that "there is nothing invidious about an offender having to elect between whether to co-operate and whether to give evidence in his defence".

43 Mr Hamzah also argued that if an accused person who attempts to meet the criteria under s 33B(2)(*b*) of the MDA "does both subsequently receive the certificate of substantive assistance by the Public Prosecutor and sentenced to death as a result of the non-issuance of the Certificate, they risk being deprived of their life in a manner which is not "in accordance with law" as mandated by Article 9(1) of the Constitution". This argument is self-contradictory and devoid of logic.

44 In any event, Mr Hamzah's legal arguments are not based on any change in the law arising from a judicial decision made after Mr Hamzah's appeal in CCA 26 was dismissed (see s 394J(4) of the CPC). The decisions in *Chum Tat Suan (HC)* and in *Chum Tat Suan (CA)* were available at the time of his trial and at his appeal. Nothing has been produced to suggest even a remote possibility of a miscarriage of justice in his conviction and sentence.

Delay in bringing the present application

45 Delay in applying for review is a relevant factor to be considered: s 394H(6A)(*b*) of the CPC. Mr Hamzah's appeal was dismissed on 20 August 2018. The present application was filed on 7 February 2025, more than six years later.

46 To explain this delay, Mr Hamzah stated that his initial applications for permission to review were rejected on technical grounds and time was needed to consider key concerns highlighted to him and/or his counsel. The records show that Mr Hamzah first attempted to bring a review application in July 2024, nearly six years after his appeal was dismissed. His filing then and his subsequent filings prior to the present application were rejected administratively at his or his then counsel's request.

47 In setting out the reason "why the material could not have been adduced" as required under r 11(2)(*b*)(iv) of the Criminal Procedure Rules 2018, Mr Hamzah states:

> (1) My good reason is that legal arguments relating to the material were not canvassed in court earlier at any stage of the process (i.e. during the trial and appeal) because the full extent of the legal arguments (stated aforesaid) were not canvassed and their merits were not considered by the Court.
>
> (2) … To the best of my knowledge and belief, the transcripts of the trial and appeal would substantiate the details of my good reason.

48 It is evident from the above that his response is meaningless. Mr Hamzah chose to be involved in various legal proceedings after the dismissal of his appeal but did nothing for almost six years to seek redress for his perceived wrongful conviction and sentence. There is certainly undue delay which fortifies the fact that he really has no cause at all to set aside his conviction and sentence.

Conclusion

49 Having considered Mr Hamzah's affidavit and the parties' written submissions, it is clear that Mr Hamzah has failed to show that there is sufficient material upon which this court may conclude that there has been a miscarriage of justice. Whatever he has raised in this application has absolutely no prospect of success and there is nothing shown which points even remotely to a possibility of miscarriage of justice. I therefore dismiss summarily

Mr Hamzah's application for permission to file a review application without setting it down for hearing pursuant to s 394H(7) of the CPC.

Tay Yong Kwang
Justice of the Court of Appeal

The applicant in person;
Wong Woon Kwong SC, Chan Yi Cheng and Maximillian Chew
(Attorney-General's Chambers) for the respondent
