IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 7

Court of Appeal / Originating Application No 5 of 2025

Between

Pannir Selvam Pranthaman

… *Applicant*

And

Attorney-General of Singapore

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Stay of execution]

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Pannir Selvam Pranthaman
v
Attorney-General

[2025] SGCA 7

Court of Appeal — Originating Application No 5 of 2025
Woo Bih Li JAD
19 February 2025

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Woo Bih Li JAD:

Introduction

1 The applicant, Mr Pannir Selvam Pranthaman (the "Applicant"), is a prisoner awaiting capital punishment ("PACP") who is scheduled to be executed on 20 February 2025. CA/OA 5/2025 ("OA 5/2025") is his application under s 60G of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA") for permission to make a post-appeal application in a capital case ("PACC application"). The Applicant intends, by way of the contemplated PACC application, to seek the following reliefs:

(a) First, a stay of the Applicant's execution pending the determination of his complaint to the Law Society of Singapore (the "Law Society") against his former counsel, Mr Ong Ying Ping ("Mr Ong") ("Ground 1").

(b) Second, a stay of the Applicant's execution pending the determination of CA/CA 2/2023 ("CA 2/2023"), which engages the constitutionality of the presumptions contained in ss 18(1) and 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "MDA") ("Ground 2").

(c) Third, a setting aside or indefinite stay of the Applicant's death sentence on the basis that the disclosure of his correspondence by the Singapore Prison Service (the "SPS") to the Attorney-General (the "AG") has brought the administration of justice into disrepute ("Ground 3").

The Applicant also seeks a stay of his execution pending the determination of OA 5/2025 and, should his application for permission be allowed, any consequent PACC application.

2 OA 5/2025 is placed before me as a single Judge sitting in the Court of Appeal pursuant to s 60G(2) of the SCJA. For the reasons which follow, I summarily allow OA 5/2025 under s 60G(8) of the SCJA without its being set down for hearing and grant permission to the Applicant to make a PACC application on Grounds 1 and 2.

Background and history of previous proceedings

3 On 2 May 2017, the Applicant was convicted in HC/CC 18/2017 ("CC 18/2017") on a single charge under s 7 of the MDA of importing not less than 51.84g of diamorphine into Singapore. The High Court found that the Applicant's involvement in the offence had fallen within s 33B(2)(*a*)(i) of the MDA in that he was a courier. However, as the Public Prosecutor did not issue a certificate of substantial assistance ("CSA") under s 33B(2)(*b*) of the MDA,

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the mandatory death sentence was passed on the Applicant: see *Public Prosecutor v Pannir Selvam Pranthaman* [2017] SGHC 144 ("Trial Judgment").

4 On 5 May 2017, the Applicant filed an appeal by way of CA/CCA 21/2017 ("CCA 21/2017") against his conviction and sentence in CC 18/2017. CCA 21/2017 was dismissed by the Court of Appeal on 9 February 2018. No written grounds were rendered.

5 Following the dismissal of CCA 21/2017, petitions for clemency were submitted by the Applicant, his family and his solicitors at the time to the President of the Republic of Singapore (the "President"). On 17 May 2019, the Applicant and his family were informed that the President had declined to exercise her power under Art 22P(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) to commute the Applicant's death sentence. The Applicant and his family were also informed on the same day by the SPS that he would be executed on 24 May 2019.

6 On 21 May 2019, the Applicant filed CA/CM 6/2019 ("CM 6/2019") seeking a stay of his execution on the basis that he intended to challenge the rejection of his clemency petition and the Public Prosecutor's decision not to issue a CSA to him. CM 6/2019 was allowed by the Court of Appeal on 23 May 2019. A stay of execution was granted and the Applicant was given time to prepare and file his intended application.

7 On 24 June 2019, the Applicant filed HC/OS 807/2019 ("OS 807/2019"), seeking leave to commence judicial review proceedings under the Rules of Court (2014 Rev Ed) (the "ROC 2014"). The Applicant sought judicial review of: (a) the Public Prosecutor's decision not to issue a

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CSA to him; (b) the advice of the Cabinet of the Republic of Singapore (the "Cabinet") to the President that the law should be permitted to take its course in relation to him; and (c) the SPS's refusal to grant him permission to interview one Zamri bin Mohd Tahir ("Zamri"), a person in the custody of the SPS. Pursuant to the proceedings in OS 807/2019:

(a) On 25 June 2019, the Applicant filed HC/SUM 3167/2019 ("SUM 3167/2019"), seeking the discovery of documents and leave to serve interrogatories against the Government, represented by the AG. The Applicant sought specific discovery of: (i) the mandatory death penalty notice that was purportedly read to and signed by him at the time of his arrest; (ii) his signed statement as recorded by Investigating Officer Neo Zhan Wei on or about 24 September 2018; and (iii) documents in relation to Zamri's phone number. Meanwhile, the interrogatories sought by the Applicant were primarily concerned with the clemency process and were directed at the President's Office, the AG and the Cabinet. They consisted of questions on the post-dating of letters by the President's Office and questions on whether the procedural requirements under Art 22P of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) had been satisfied. SUM 3167/2019 was dismissed by the High Court on 19 July 2019.

(b) On 26 July 2019, the Applicant filed HC/SUM 3764/2019 ("SUM 3764/2019"), seeking leave to appeal against the decision in SUM 3167/2019. SUM 3764/2019 was dismissed by the High Court on 19 August 2019: see *Pannir Selvam a/l Pranthaman v Attorney-General* [2020] 3 SLR 796.

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(c) On 26 August 2019, the Applicant filed CA/OS 31/2019 ("OS 31/2019"), again seeking leave to appeal against the decision in SUM 3167/2019. OS 31/2019 was dismissed by the Court of Appeal on 5 November 2019.

OS 807/2019 itself was dismissed by the High Court on 12 February 2020: see *Pannir Selvam a/l Pranthaman v Attorney-General* [2022] 3 SLR 838.

8 On 25 February 2020, the Applicant filed an appeal by way of CA/CA 33/2020 ("CA 33/2020") against the High Court's decision in OS 807/2019. CA 33/2020 was dismissed by the Court of Appeal on 26 November 2021: see *Pannir Selvam a/l Pranthaman v Attorney-General* [2022] 2 SLR 421.

9 On 1 October 2020, 11 prison inmates filed HC/OS 975/2020 ("OS 975/2020"), seeking pre-action discovery and leave to serve pre-action interrogatories against the AG and the Superintendent of Changi Prison (Institution A1) (the "Superintendent"). It had previously transpired that the SPS had copied and forwarded to the Attorney-General's Chambers (the "AGC") certain correspondence between inmates and their lawyers and families. The plaintiffs thus sought discovery of: (a) the letters between the AG and the Superintendent concerning the AG's requests for copies of the correspondence between the plaintiffs and their lawyers and families; and (b) copies of the plaintiffs' correspondence forwarded to the AG by the Superintendent, together with any enclosures thereto. The plaintiffs also sought leave to serve pre-action interrogatories on the AG with a view to identifying: (a) the persons who had requested for the plaintiffs' correspondence to be forwarded to the AG; (b) the persons who had forwarded the plaintiffs' correspondence to the AG; (c) the dates the requests or responses above were made; and (d) the persons to whom

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any disclosures of the plaintiffs' correspondence were made. On 4 December 2020, pursuant to HC/SUM 5265/2020, 11 other inmates, including the Applicant, were added by consent as plaintiffs to OS 975/2020. OS 975/2020 was dismissed by the General Division of the High Court on 16 March 2021: see *Syed Suhail bin Syed Zin and others v Attorney-General and another* [2021] 4 SLR 698.

10 On 2 July 2021, 13 inmates, including the Applicant, filed HC/OS 664/2021 ("OS 664/2021"), seeking leave to commence judicial review proceedings under the ROC 2014. Specifically, the plaintiffs sought leave to seek: (a) declarations that the AG and the SPS had acted *ultra vires* in respect of their correspondence; (b) prohibitory orders to prohibit the AGC from requesting for copies of their correspondence, and to prohibit the SPS from sending their correspondence to the AGC; and (c) various private law reliefs in the law of copyright and confidence relating to their correspondence. On 28 October 2021, the General Division of the High Court granted permission for OS 664/2021 to be withdrawn: see *Syed Suhail bin Syed Zin and others v Attorney-General* [2022] 5 SLR 93.

11 On 25 February 2022, 13 inmates, including the Applicant, filed HC/OS 188/2022 ("OS 188/2022"). The reliefs sought by the plaintiffs were virtually identical to those previously sought in OS 664/2021, save that OS 664/2021 had additionally sought leave for orders prohibiting the SPS from sending, and the AGC from requesting, prisoners' correspondence, and for a "mandatory order" compelling the AGC to destroy correspondence that it had received from the SPS. On 1 July 2022, the General Division of the High Court granted nominal damages of $10 to the three plaintiffs, not including the Applicant, who had claimed for infringement of copyright. The remaining prayers in OS 188/2022 were dismissed.

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12 On 29 July 2022, the plaintiffs in OS 188/2022 filed an appeal by way of CA/CA 30/2022 ("CA 30/2022") against the General Division of High Court's decision in OS 188/2022. On 11 October 2024, the Court of Appeal allowed CA 30/2022 in part, granting declarations that the AGC and the SPS had acted unlawfully by, respectively, requesting and disclosing the plaintiffs' correspondence. The court also found that the SPS and the AGC had acted in breach of confidence by, respectively, the disclosure and retention of the plaintiffs' correspondence. However, it declined to vary the High Court's decision to grant nominal damages of $10 to the three aforementioned plaintiffs for infringement of copyright: see *Syed Suhail bin Syed Zin and others v Attorney-General* [2024] 2 SLR 588.

13 On 1 August 2022, 24 inmates, including the Applicant, filed HC/OC 166/2022 ("OC 166/2022"), seeking a declaration that ss 356, 357 and 409 of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC"), which empower the court to order costs in criminal proceedings, were inconsistent with Arts 9(1) and 12(1) of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution") and were consequently null, void and unlawful. The plaintiffs also sought damages for breach of statutory duty. The AG applied by way of HC/SUM 2858/2022 ("SUM 2858/2022") to strike out OC 166/2022 under O 9 r 16 of the Rules of Court 2021 (the "ROC 2021"). On 3 August 2022, the General Division of the High Court allowed SUM 2858/2022 and struck out OC 166/2022.

14 On 3 August 2022, the plaintiffs in OC 166/2022 filed an appeal by way of CA/CA 31/2022 ("CA 31/2022") against the General Division of the High Court's decision in SUM 2858/2022 to strike out OC 166/2022. On 4 August 2022, the Court of Appeal dismissed CA 31/2022: see *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018.

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15 On 26 September 2023, 36 inmates, including the Applicant, filed HC/OA 987/2023 ("OA 987/2023"), seeking declarations that ss 60G(7)(*d*) and 60G(8) of the SCJA were void for inconsistency with Arts 9 and 12 of the Constitution. Sections 60G(7)(*d*) and 60G(8) of the SCJA were new provisions introduced by way of s 2(*b*) of the Post-appeal Applications in Capital Cases Act 2022 (No 41 of 2022) (the "PACC Act") but which were not yet operative at the time because the PACC Act had not yet come into force. Under s 60G(7)(*d*) of the SCJA, in determining whether to grant permission to a PACP to make a PACC application, the Court of Appeal is required to consider, among other matters, whether the PACC application to be made has a reasonable prospect of success. Under s 60G(8) of the SCJA, meanwhile, the Court of Appeal may summarily deal with an application for PACC permission without an oral hearing. The AG applied by way of HC/SUM 3096/2023 ("SUM 3096/2023") to strike out OA 987/2023 under O 9 r 16 of the ROC 2021 as the PACC Act had not yet come into force. On 5 December 2023, the General Division of the High Court allowed SUM 3096/2023 and struck out OA 987/2023: see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 4 SLR 331.

16 On 1 August 2023, the Applicant filed CA/CM 32/2023 ("CM 32/2023"). This application arose from the proceedings in CA 30/2022 (mentioned at [12] above). These proceedings concerned the disclosure of prisoners' correspondence with others by the SPS to the AGC. In the course of the hearing of CA 30/2022, it became clear that the appellants there premised part of their claims for damages for breach of confidence and infringement of copyright on the basis that there had been a breach of their fair hearing rights in the criminal process relating to their convictions and/or sentences. The Court of Appeal was of the view that the appropriate remedy for this lay in the criminal rather than the civil realm. Accordingly, the appellants in CA 30/2022 were

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granted permission to bring separate criminal motions for relief under the criminal law, to the extent that such motions arose from the disclosed correspondence in question. The Applicant filed CM 32/2023 pursuant to that permission. However, in CM 32/2023, which was an application for permission for the Court of Appeal to review its decision in CCA 21/2017 (see [4] above), the Applicant included a ground other than the disclosure of his correspondence. On 1 August 2024, the Court of Appeal dismissed CM 32/2023: see *Pausi bin Jefridin v Public Prosecutor and other matters* [2024] 1 SLR 1127 ("*Pausi bin Jefridin*"). As mentioned at [12] above, the decision in CA 30/2022 was given later on 11 October 2024.

17 On 5 January 2024, the applicants in OA 987/2023 filed an appeal by way of CA/CA 1/2024 ("CA 1/2024") against the General Division of the High Court's decision in SUM 3096/2023 to strike out OA 987/2023. On 27 March 2024, the Court of Appeal dismissed CA 1/2024: see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 1 SLR 414.

18 On 28 March 2024, 36 inmates, including the Applicant, filed HC/OA 306/2024 ("OA 306/2024"), seeking a declaration that the alleged policy of the Legal Aid Scheme for Capital Offences ("LASCO") not to assign LASCO counsel for the purposes of post-appeal applications was inconsistent with Arts 9 and 12 of the Constitution. The applicants also sought damages. The AG applied by way of HC/SUM 1124/2024 ("SUM 1124/2024") to strike out OA 306/2024 under O 9 r 16 of the ROC 2021. On 20 May 2024, the General Division of the High Court allowed SUM 1124/2024 and struck out OA 306/2024: see *Iskandar bin Rahmat and others v Attorney-General* [2024] 5 SLR 1290.

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19 On 29 May 2024, the applicants in OA 306/2024 filed an appeal by way of CA/CA 38/2024 ("CA 38/2024") against the General Division of the High Court's decision in SUM 1124/2024 to strike out OA 306/2024. On 9 September 2024, the Court of Appeal dismissed CA 38/2024.

20 On 19 September 2024, 31 inmates, including the Applicant, filed HC/OA 972/2024 ("OA 972/2024"), seeking declarations that ss 60G(7)(d), 60G(8), 60H(6) and 60I(1) of the SCJA, as well as s 313(2) of the CPC, were void for inconsistency with Arts 9 and 12 of the Constitution. Leaving aside ss 60G(7)(*d*) and 60G(8) of the SCJA, which have been summarised at [15] above, s 60H(6) provides that the Court of Appeal may summarily deal with a PACC application without an oral hearing. Meanwhile, s 60I(1) provides that, where any application for PACC permission, or any PACC application, made by a PACP is pending determination, the PACP cannot make a subsequent application for PACC permission or a subsequent PACC application unless the PACP has the permission of the Court of Appeal dealing with the specified application to do so. As for s 313(2) of the CPC, s 313(1)(*ia*)(ii) provides that a warrant of execution may not be carried out when there is an application for permission to apply for a stay of execution, or an application for a stay of execution, filed in the Court of Appeal and served on the SPS. Against this backdrop, s 313(2) provides:

> Despite subsection (1)(*ia*)(ii), the warrant may be carried out if —
>
> (*a*) the application mentioned in that provision has been filed by a PACP who had previously been found —
>
> (i) by the Court of Appeal to have abused the process of the court in relation to a relevant application that was filed on or after the date of commencement of the Post-appeal Applications in Capital Cases Act 2022; or

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> (ii) by the Court of Appeal to have abused the process of the court in order to delay or frustrate the carrying out of the sentence of death in relation to an application (other than a relevant application) or an action that was filed on or after the date mentioned in sub-paragraph (i); and
>
> (*b*) the PACP does not have the permission of the Court of Appeal to make a PACC application under section 60G of the Supreme Court of Judicature Act 1969, or to make a review application under section 394H.

The AG applied by way of HC/SUM 2898/2024 ("SUM 2898/2024") to strike out OA 972/2024 under O 9 r 16 of the ROC 2021. On 5 February 2025, the General Division of the High Court allowed SUM 2898/2024 and struck out OA 972/2024: see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2025] SGHC 20.

21 On 27 January 2025, the President issued an order under s 313(1)(*f*) of the CPC for the Applicant to be executed on 20 February 2025. The Applicant received the notice of execution on 16 February 2025.

The law governing an application for permission to make a PACC application

22 Section 60F of the SCJA defines a PACC application as any application which satisfies the following three criteria:

> (a) First, the application is not a "review application" within the meaning of s 394F of the CPC to review an earlier decision of the Court of Appeal relating to the offence for which the sentence of death was imposed on a PACP.
>
> (b) Second, the application is made by a PACP after the "relevant date". In relation to the first PACC application by a PACP, this means: (i) the date of dismissal of the appeal by the Court of Appeal in relation

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to the offence for which the sentence of death was imposed on the PACP; (ii) the date of imposition of the sentence of death by the Court of Appeal in an appeal against the acquittal of the PACP of an offence punishable with death, or against a non-capital sentence imposed on the PACP; or (iii) the date of the issuance by the Court of Appeal of a certificate confirming the imposition of the sentence of death on the PACP.

(c) Third, either of the following applies: (i) "the application is for a stay of the execution of the death sentence on the PACP"; or (ii) "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". It is important to emphasise that these are alternative limbs. Thus, a PACC application need not engage the propriety of the PACP's conviction or sentence of death if it seeks a stay of execution on other grounds.

23 Before making a PACC application, an applicant is required under s 60G(1) of the SCJA to apply to the Court of Appeal for, and obtain, its permission to do so. Section 60G(7) prescribes several matters which the Court of Appeal must consider in determining such an application for permission:

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

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> 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.

Section 60G(4), to which s 60G(7)(*c*) refers, provides that the applicant in an application for PACC permission must file written submissions in support of that application, and such other documents as are prescribed in the ROC 2021, within such periods as are therein prescribed.

24 The requirements under ss 60G(7)(*a*) and 60G(7)(*c*) of the SCJA are not in issue in OA 5/2025. Accordingly, in what follows, I focus my attention on the requirements under ss 60G(7)(*b*) and 60G(7)(*d*) of the SCJA.

Whether there was any delay in filing the application for PACC permission

25 I first consider whether there was any delay in filing the application for PACC permission and, if so, the reasons for the delay (see s 60G(7)(*b*) of the SCJA). The Applicant asserts that OA 5/2025 was brought at the earliest opportunity after he received the notice of execution on 16 February 2025. He adds that he could not have known that he would be scheduled for execution despite the ongoing proceedings against Mr Ong, which may require his involvement, and the ongoing proceedings in CA 2/2023. The Applicant also adds that OA 5/2025 could not have been brought any sooner owing to his "troubles with Mr Ong", as evidenced by his complaint to the Law Society.

26 The Applicant also raises the following allegation in relation to the timing of his execution. On 6 February 2025, his present counsel, Mr Too Xing Ji ("Mr Too"), had informed the SPS by way of an email that he had been instructed to prepare and submit a further petition of clemency to the President,

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"taking into account the material developments since [the Applicant] was initially granted a stay of execution on 23 May 2019". Mr Too then added in his email that, as he would be away on personal leave from 6 to 28 February 2025, he would only be able to commence working on the matter in March 2025. The Applicant observes that the SPS would have been aware from this email that Mr Too is presently unavailable. On this basis, he alleges that the scheduling of his execution represents "a calculated attempt upon my life with the knowledge that Mr Too [*sic*] absence would present a great difficulty for me in preparing this application and to make use of this absence to execute me without a [*sic*] proper legal representation".

27 I begin with this last-mentioned allegation. The Applicant has offered no evidence in support of it. It is also refuted in the affidavit of Senior Director in the Policy Development Division of the Ministry of Home Affairs, Sanjay Nanwani ("Mr Nanwani"). Mr Nanwani states categorically that Mr Too's email was not taken into account in the scheduling of the Applicant's execution and, more broadly, that the Applicant's execution was not scheduled with a view to depriving him of Mr Too's assistance. Instead, according to Mr Nanwani, the Applicant was scheduled for execution after he had exhausted all legal processes in relation to his conviction and sentence, and in accordance with the usual considerations as recognised by the Court of Appeal in *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809. I see no reason to doubt Mr Nanwani's account and reject the Applicant's allegation accordingly.

28 I turn to the more general issue of whether there was any delay in the filing of OA 5/2025.It is important to note that the fact of an ongoing proceeding does not automatically operate as a stay of execution. It was incumbent on the Applicant to seek a stay of execution at the earliest opportunity and not wait until he had been informed of the date of his execution. It bears stating that the

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Applicant is clearly aware of the need to apply for a stay of execution, having previously done so by way of CM 6/2019 (mentioned at [6] above). He has not adequately explained why he did not apply for a stay of execution immediately after filing his complaint against Mr Ong on 24 October 2024, even though he had already engaged Mr Too by then. Nor has he adequately explained why he did not apply for a stay of execution immediately after learning about the proceedings in CA 2/2023. Indeed, he has not explained in his affidavit when he first learnt of these proceedings and why he has failed to express any interest in them until now.

29 Further, beyond a bare statement, the Applicant has not elaborated on how his "troubles" with Mr Ong precluded him from filing OA 5/2025 earlier if he had really wanted to do so. After the complaint against Mr Ong was made on 24 October 2024, the Applicant had more than enough time to file OA 5/2025 before he was notified on 16 February 2025 of the date of his execution. In this connection, insofar as the Applicant alleges that his execution was deliberately scheduled to deprive him of Mr Too's assistance, this would not have been an issue if he had filed OA 5/2025 earlier.

30 In any event, the speed with which OA 5/2025, a detailed affidavit and written submissions were filed by the Applicant on 17 February 2025 indicates that the papers were ready for filing all along. The fact that the Applicant could still file OA 5/2025 and the supporting papers while Mr Too is on personal leave also contradicts his professed need to rely on Mr Too's assistance.

31 As Mr Too's email to the SPS on 6 February 2025 indicates, it appears that the Applicant intends to submit a further petition of clemency to the President. This is not advanced as an independent ground in support of OA 5/2025. In any event, I am of the view that the Applicant has unreasonably

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delayed in submitting this further clemency petition. There was no reasonable basis to wait for Mr Too's return from personal leave before submitting it. The Applicant could have engaged another lawyer to do so. Indeed, the Applicant was able to file OA 5/2025 and the supporting papers in Mr Too's absence, albeit allegedly with the assistance of his family. More importantly, as the messages exhibited in the Applicant's affidavit show, the prospect of filing a further clemency petition had been raised by Mr Ong to the Applicant's family as early as 4 August 2024. Mr Ong stated that this further petition could be based on the SPS's disclosure of the Applicant's correspondence to the AGC. When asked by the Applicant's family for his assistance in the writing of this petition, Mr Ong said that he would consider the matter carefully and get back to them. However, there is no elaboration by the Applicant as to what happened between 4 August 2024 and 6 February 2025 when Mr Too sent his email to the SPS. In the circumstances, I am of the view that the Applicant's professed intention to submit a further clemency petition is part of a strategy to delay his execution. Mr Too knew that no stay of execution had been ordered before going on personal leave from 6 to 28 February 2025. His present unavailability is no reason to allow the Applicant to further delay his execution.

Whether the PACC application to be made has a reasonable prospect of success

32 I turn now to the question whether the Applicant's contemplated PACC application has a reasonable prospect of success (see 60G(7)(*d*) of the SCJA).

Ground 3

33 I begin with Ground 3. The Applicant's argument here is that the SPS's disclosure of his correspondence to the AGC, which was previously found to have been unlawful, has brought the administration of justice into disrepute. On

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this basis, he submits that his death sentence should be set aside or indefinitely stayed.

34 In my judgment, Ground 3 has no prospect of success whatsoever. It is neither here nor there whether the unlawful disclosure of the Applicant's correspondence has brought the administration of justice into disrepute. The critical question is whether the disclosure had the effect of calling into question the propriety of the Applicant's conviction and sentence. However, this question was squarely considered and answered in the negative by the Court of Appeal in the course of its dismissal of CM 32/2023. In this connection, the court made the following salient observations:

(a) The disclosure of the Applicant's correspondence had only taken place after: (i) he was convicted and sentenced in CC 18/2017; and (ii) his appeals against his conviction and sentence in CCA 21/2017 were dismissed. It followed that the disclosure could not have affected or undermined the integrity of his conviction or appeal: *Pausi bin Jefridin* at [24(a)] and [26].

(b) Even if the disclosed correspondence had been forwarded to the AGC by the SPS prior to the relevant criminal proceedings, the disclosure could not have affected the propriety of those proceedings. This is because, having regard to the nature of the disclosed correspondence, the Prosecution would have obtained no conceivable advantage: *Pausi bin Jefridin* at [28] and [32].

35 Accordingly, I refuse permission to the Applicant to make a PACC application on Ground 3.

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Ground 2

36 I turn next to Ground 2. Here, the Applicant submits that his execution should be stayed pending the determination of CA 2/2023 because a successful result there will have a "fundamental impact" on his conviction.

37 By way of background, CA 2/2023 is an appeal against the General Division of the High Court's decision in HC/OA 480/2022 ("OA 480/2022"). In OA 480/2022, which was commenced on 22 August 2022, the claimants had applied for permission to seek the following reliefs:

> a. A Declaration that the Presumptions contained in Section 18(1) and 18(2) of the Misuse of Drugs Act 1973 ("MDA") which were imposed upon the Claimants should be read down and given effect as imposing an evidential burden only in Compliance with Articles 9(1) and 12(1) of the Constitution and the Common law Presumption of innocence.
>
> b. Alternatively, a Declaration that the Presumption upon Presumption contained in Section 18(2) read with Section 18(1) of the MDA which were imposed upon the Claimants are unconstitution [*sic*] for violating Articles 9(1) and 12(1) of the Constitution.
>
> c. A Prohibitory order against the execution of the death sentences upon the Claimants.

OA 480/2022 was dismissed by the General Division of the High Court on 25 November 2022: see *Jumaat bin Mohamed Sayed and others v Attorney-General* [2022] SGHC 291.

38 On 23 December 2022, the claimants filed an appeal by way of CA 2/2023 against the decision in OA 480/2022. However, they failed to comply with the timeline to file various relevant documents and CA 2/2023 was consequently deemed withdrawn on 14 March 2023.

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39 On 31 March 2023, the claimants applied by way of CA/SUM 8/2023 ("SUM 8/2023") for the reinstatement of CA 2/2023 and an extension of time to file the relevant documents. SUM 8/2023 was dismissed by a single Judge of the Court of Appeal on 25 May 2023: see *Jumaat bin Mohamed Sayed and others v Attorney-General* [2023] 1 SLR 1437 ("*Jumaat (SUM 8/2023)*").

40 On 6 June 2023, the claimants applied by way of CA/SUM 16/2023 ("SUM 16/2023") to set aside the order dismissing SUM 8/2023, and for the reinstatement of CA 2/2023 and an extension of time to file the relevant documents. At a hearing on 23 January 2025, the Court of Appeal invited further submissions from the parties on various substantive issues, including the nature and status of the presumption of innocence and the compatibility of the presumptions in ss 17 and 18 of the Misuse of Drugs Act 1973 (2020 Rev Ed) with that presumption. SUM 16/2023 remains pending.

41 Although the Applicant is not a party to CA 2/2023, and was likewise not a party to OA 480/2022, he submits that he is similarly situated to the claimants there because he was convicted on the basis of the presumption under s 18(2) of the MDA. Accordingly, should CA 2/2023 succeed, this will have a "fundamental impact" on his conviction. The Applicant thus submits that his execution should be stayed pending the determination of CA 2/2023. While it may seem inappropriate to refer to the determination of CA 2/2023 when it has been deemed withdrawn, it is obvious that what the Applicant means is the determination of SUM 16/2023 and, if successful, the determination of CA 2/2023.

42 It should first be observed that there are significant hurdles standing in the way of a successful result in CA 2/2023. There is, to begin with, the obvious procedural hurdle that CA 2/2023 has been deemed withdrawn and, depending

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on the outcome of SUM 16/2023, may not be reinstated. In addition, serious reservations have been expressed on multiple occasions about the substantive merits of the issues in CA 2/2023. For example, in dismissing SUM 8/2023, the single Judge of the Court of Appeal made the following observations (*Jumaat (SUM 8/2023)* at [25]–[28]):

> 25 It is plain that OA 480 and consequently CA 2, is in essence a challenge against the conviction of the applicants. This amounts to an attempt to review the *concluded* criminal appeals with respect to their convictions. In seeking leave to apply for a prohibiting order against the execution of their capital punishments, the applicants are in substance challenging their convictions. The proper procedure to mount such a challenge following their concluded criminal appeals, as rightly determined by the Judge, is by way of a criminal review application under s 394H of the CPC or by invoking the inherent power of the court.
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> 26 To obtain permission under s 394H(1) of the CPC, the application must disclose a 'legitimate basis for the exercise of [the appellate court's] power of review': *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 at [17]. In order to do so, the applicant must establish that the cumulative requirements under s 394J of the CPC for the appellate court's exercise of its power of review are satisfied. Section 394J(2) of the CPC requires the applicant to show that there is 'sufficient material' (being evidence or legal argument) on which the appellate court may conclude that there has been a 'miscarriage of justice' in the criminal matter in respect of which the earlier decision was made. The requirements of sufficiency and miscarriage of justice are a composite requirement under s 394J(2) of the CPC: *Rahmat bin Karimon v Public Prosecutor* [2021] 2 SLR 860 at [22] …
>
> 27 In the present case, there is no 'sufficient material' for the court to consider that the threshold of a miscarriage of justice has been crossed. The applicants' arguments on the unconstitutionality of the presumptions in s 18 of the MDA could have been raised earlier with reasonable diligence. Given that the Prosecution had relied on the presumptions under s 18 of the MDA in their cases against the applicants at first instance, it would have been clear to the applicants that the presumptions were significant in the case brought against them. There was no reason why the applicants could not have raised the purported contravention of Arts 9(1) and 12(1) of the Constitution at their trials or on their respective appeals. Furthermore, the applicants' argument on the

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> unconstitutionality of s 18 of the MDA is clearly not based on any change in the law that arose from any decision made by a court after the conclusion of all proceedings relating to their criminal matters in respect of which their convictions rest and as such would have failed to satisfy s 394J(4) of the CPC.
>
> 28 In any event, the applicants' argument that ss 18(1) and 18(2) of the MDA violate the constitutionally-protected presumption of innocence is neither new nor novel. This argument was first examined by the Privy Council in [*Ong Ah Chuan and another v Public Prosecutor* [1979-1980] SLR(R) 710 ("*Ong Ah Chuan*")]. There, the Privy Council considered the previous iteration of s 17 of the MDA (*ie*, s 15 of the Misuse of Drugs Act 1973 (Act 5 of 1973)), which provided that an accused person would be presumed to have had controlled drugs in his possession for the purpose of trafficking if it was proven that he was in possession of more than a specified quantity of controlled drugs. The appellants argued that the statutory presumption under s 15 of the MDA was in conflict with the 'presumption of innocence', which is a fundamental human right protected by the Constitution and cannot be limited or diminished by any Act of Parliament which has not been passed by the majority of votes necessary under Art 5 for an amendment to the Constitution. The Privy Council in *Ong Ah Chuan* held that the equivalent of s 17 of the MDA, being a statutory presumption which, upon proof of certain facts, shifted the burden of proof to the accused and could be rebutted on a balance of probabilities, was not contrary to Arts 9(1) and 12(1) of the Constitution: *Ong Ah Chuan* at [38] and [40].

43 Also instructive are the views expressed by the Court of Appeal in *Kassimatis, Theodoros KC v Attorney-General and another and another appeal* [2024] 2 SLR 410 ("*Kassimatis*"). This concerned the applications of two foreign counsel for *ad hoc* admission to practise as advocates and solicitors of the Supreme Court of Singapore under s 15 of the Legal Profession Act 1966 (2020 Rev Ed) (the "LPA") to represent the claimants in CA 2/2023 and SUM 16/2023. The General Division of the High Court dismissed the applications. On appeal, the Court of Appeal upheld this decision, agreeing among other things that there was no special reason to justify the admissions. In this context, the court observed that: (a) various precedents ran against the claimants' contentions that ss 18(1) and 18(2) of the MDA are incompatible

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with the presumption of innocence and the Constitution (at [47]); (b) the Court of Appeal had previously already made clear that the presumptions under ss 18(1) and 18(2) of the MDA are evidential tools that operate to presume specific facts (at [48]); and (c) the presumptions in ss 18(1) and 18(2) of the MDA have also been used together in several past decisions (at [49]). In this context, the court stated (at [52]):

> The Appellants face two main obstacles in establishing a special reason on the material they have advanced. First, they will need to show how the many prior decisions on ss 18(1) and 18(2) of the MDA may be wrong. Second, they will also need to explain how, even if they are right that ss 18(1) and 18(2) of the MDA are unconstitutional, it could lead to the outcome that they are seeking, which is essentially to review or reopen the underlying concluded appeals …

44 Despite these observations, the fundamental point remains that SUM 16/2023 has not been summarily dismissed. Indeed, as indicated earlier (see [40] above), the Court of Appeal has invited further submissions from the parties on various substantive issues. The possibility therefore remains open that the presumption under s 18(2) may be found to be unconstitutional in CA 2/2023 if SUM 16/2023 is allowed. This is likely to have the effect of undermining the propriety of the Applicant's conviction, which was based on his failure to rebut the presumption under s 18(2) on a balance of probabilities (see Trial Judgment at [38]). Importantly, the trial court did not state that the Applicant would have been found in any event to have had knowledge of the nature of the drugs. The Court of Appeal similarly did not make any finding to this effect in dismissing CCA 21/2017. Noticeably, although the AG has drawn attention to the observations of the single Judge of the Court of Appeal in *Jumaat (SUM 8/2023)* about the substantive merits of CA 2/2023, the AG has not denied that, *if* SUM 16/2023 and CA 2/2023 are allowed, this is likely to call into question the propriety of the Applicant's conviction. Rather, the AG

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resists Ground 2 based on views expressed in other cases to argue that SUM 16/2023 and CA 2/2023 will not be allowed.

45 To be clear, the contemplated PACC application is not in itself to question the propriety of the Applicant's conviction. Rather, it is to seek a stay of execution on the basis that a successful outcome in SUM 16/2023 and CA 2/2023 will undermine the propriety of his conviction. Thus, the relevant consideration is whether there is a reasonable prospect of success in SUM 16/2023 and CA 2/2023.

46 In light of the pending proceedings in SUM 16/2023 and CA 2/2023, I conclude that the contemplated PACC application on Ground 2 has a reasonable prospect of success. Accordingly, notwithstanding his delay in filing OA 5/2025, I grant permission to the Applicant to make a PACC application on Ground 2 but with the clarification that it is pending the determination of SUM 16/2023 and, if successful, the determination of CA 2/2023.

Ground 1

47 I finally consider Ground 1. Here, the Applicant's argument is that his execution should be stayed pending the determination of his complaint to the Law Society against Mr Ong.

48 By way of background, on 24 October 2024, Mr Too had lodged a complaint under ss 75B and 85(1) of the LPA with the Law Society in respect of Mr Ong's conduct of CM 32/2023. The Applicant alleged that Mr Ong had: (a) pressured and misled the Applicant into signing a notice to act in person; (b) refused to represent the Applicant only three days before a hearing on 1 August 2024; (c) misled the court as to why he was seeking to discharge himself as counsel; (d) continued to collect legal fees from the Applicant's family even

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after having the Applicant sign the notice to act in person; and (e) pressured the Applicant to double the agreed legal fees from $5,000 to $10,000 by threatening otherwise to focus on other cases. On 13 January 2025, the Law Society informed the Applicant that his complaint under s 85(1) of the LPA would be referred to the Chairman of the Inquiry Panel by the Council of the Law Society, who would constitute a Review Committee to review the complaint. As for the Applicant's complaint under s 75B of the LPA, this would be held in abeyance until the conclusion of investigations into his complaint under s 85(1).

49 The Applicant claims that the proceedings against Mr Ong may require his involvement because he is a "material witness". He also retains an interest in the outcome of those proceedings because he may wish to commence an action in negligence against Mr Ong for the recovery of fees and damages. Furthermore, there is a strong public interest in the proper prosecution of his complaint against Mr Ong. For these reasons, the Applicant submits that his execution should be stayed while the proceedings against Mr Ong are ongoing. This may include, if necessary, the pursuit of his complaint "all the way to Singapore's highest court".

50 In my judgment, the proceedings against Mr Ong do not have any bearing on the propriety of the Applicant's conviction or sentence. Noticeably, even the Applicant does not mount any submission to the contrary. I refer in this regard to the Court of Appeal's instructive observations in *Masoud Rahimi bin Mehrzad v Public Prosecutor* [2024] SGCA 56 ("*Masoud*"). The applicant was also among the appellants in CA 30/2022 who were granted permission to bring separate criminal motions for relief under the criminal law (see [16] above). Like the Applicant, he was initially represented by Mr Ong and, after the dismissal of his criminal motion, subsequently also complained to the Law Society about the circumstances surrounding Mr Ong's discharge application.

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This was one of the grounds on which he later sought permission to make a PACC application. In rejecting the application, the court observed (at [70]): "Even if Mr Ong Ying Ping is sanctioned subsequently, that will not affect or undermine the integrity of Mr Masoud's conviction and appeal in any aspect." I respectfully agree with this observation. I add also that they apply with equal force to the additional allegations raised by the Applicant about Mr Ong's charging of legal fees. These allegations, even subsequently made out against Mr Ong, will not cast any doubt on the propriety of the Applicant's conviction or sentence.

51 Nonetheless, as observed earlier (see [22(c)] above), a PACC application need not engage the propriety of a PACP's conviction or sentence but may instead be for a stay of his execution on other grounds. The fact that the proceedings against Mr Ong do not have any bearing on the propriety of the Applicant's conviction or sentence is not, therefore, the end of the inquiry. A stay of execution may nonetheless be warranted on the basis that those proceedings amount to a relevant proceeding. Whether this is so will require a careful consideration and application of the Court of Appeal's remarks in *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 and in *Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 and cannot be finally determined at this stage. It suffices to say that, in my view, there is a reasonable prospect of success in the contemplated PACC Application on Ground 1.

52 I also observe that, according to the Applicant, he had acted promptly in providing a detailed account of Mr Ong's alleged misconduct to Mr Too by 6 September 2024, and that as early as August or September 2024 he had sought out Mr Too for his assistance to prepare the complaint against Mr Ong. Conversely, in *Masoud* and *Roslan bin Bakar v Attorney-General* [2024] 2 SLR 433 ("*Roslan*"), although the applicants raised similar complaints against

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Mr Ong, he had remained their counsel in related matters up to 16 October 2024: see *Masoud* at [70] and *Roslan* at [53]. Thus, I am unable to conclude at this stage that the Applicant's complaint is just a stopgap measure to delay his execution.

53 Accordingly, notwithstanding his delay in filing OA 5/2025, I grant permission to the Applicant to make a PACC application on Ground 1 as well.

Conclusion

54 For the above reasons, I summarily allow OA 5/2025 under s 60G(8) of the SCJA without its being set down for hearing and grant permission to the Applicant to make a PACC application on Grounds 1 and 2. In arriving at this decision, I have considered the following documents: (a) the Applicant's affidavit of 17 February 2025; (b) the Applicant's written submissions of 17 February 2025; (c) the Applicant's further written submissions of 18 February 2025; (d) the AG's written submissions of 18 February 2025; and (e) Mr Nanwani's affidavit of 18 February 2025.

55 I also order a stay of the Applicant's execution pending the determination of his PACC application.

Woo Bih Li
Judge of the Appellate Division

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The applicant in person;
Terence Chua Seng Leng, Nicholas Wuan Kin Lek, Teo Siu Ming
(Attorney-General's Chambers) for the respondent.

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