

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC 284

Criminal Case No 4 of 2024

Between

Public Prosecutor

And

Iswan bin Ali

JUDGMENT

[Criminal Procedure and Sentencing — Sentencing]

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Public Prosecutor
v
Iswan bin Ali

[2024] SGHC 284

General Division of the High Court — Criminal Case No 4 of 2024
Dedar Singh Gill J
17 September, 1 October 2024

6 November 2024

Dedar Singh Gill J:

1 The accused, Iswan bin Ali (“Iswan”), faced one charge of having in his possession for the purpose of trafficking not less than 61.19g of diamorphine under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). On 17 September 2024, I found that 51.41g of diamorphine, in Exhibits A1A1A, A1A2A, A1A3A and B1A1 (collectively, the “Drug Exhibits”), was in Iswan’s possession for the purpose of trafficking. However, as Iswan had raised sufficient doubt as to whether Exhibits C1A and C1B were in his possession for the purpose of trafficking, I exercised my power pursuant to s 128(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the “CPC”) to alter the charge against him (*Public Prosecutor v Iswan bin Ali* [2024] SGHC 239 (“*Iswan bin Ali*”) at [96]–[97]).

2 The altered charge states as follows:

YOU ARE CHARGED and the charge against you is:

That you, **ISWAN BIN ALI**, on the 9 April 2020, at about 12.45 a.m., in a Singapore registered car bearing plate number SJL 6639L, parked at the open carpark of Blk 90 Pipit Road, Singapore, did traffic in a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“**MDA**”), *to wit*, by having in your possession for the purpose of trafficking, four packets containing not less than 1843.8 grams of granular / powdery substance, which was analysed and found to contain not less than 51.41 grams of diamorphine, without any authorisation under the MDA or the regulations made thereunder, and you have committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33(1) of the MDA.

3 Both the Defence and the Prosecution did not wish to call any additional witnesses or recall any witness with regards to the altered charge.¹

4 I adjourned the matter for Iswan to consider his plea with respect to the altered charge, and for further submissions from both the Defence and the Prosecution as to whether Iswan would be a “courier” under s 33B of the MDA.

5 Iswan pleaded guilty to the altered charge. Under s 227(3) of the CPC, the General Division of the High Court must not record a plea of guilty in a case where the accused pleads guilty to an offence punishable with death unless evidence is led by the prosecution to prove its case at the trial. Based on the evidence led at the trial and my findings in *Iswan bin Ali*, I find that the Prosecution has proved the altered charge against Iswan beyond a reasonable doubt. I therefore convict Iswan of the altered charge.

¹ Certified Transcript (17 September 2024) at p 3 lines 2 to 16.

Decision on Sentence

6 The prescribed punishment for an offence of trafficking more than 15g of diamorphine under s 5(1)(a) of the MDA, pursuant to s 33 of the MDA read with the Second Schedule, is the mandatory death penalty.

7 A person convicted of an offence under s 5(1) that is punishable with death may nonetheless bring himself within the scope of s 33B(1), which either: (a) allows for the imposition of a sentence of life imprisonment with 15 strokes of the cane if the requirements under s 33B(2) are satisfied; or (b) a sentence of imprisonment if the requirements under s 33B(3) are satisfied. Section 33B(3) requires an offender to prove, amongst other requirements, that he was suffering from an abnormality of mind that substantively impaired his mental responsibility for his acts and omissions in relation to the offence. The Defence does not allege any abnormality of mind on Iswan's part. Thus, the only potentially relevant provision is s 33B(2).

8 Section 33B(2) imposes two requirements. First, the accused bears the burden of proving, on a balance of probabilities, that his involvement in the offence under s 5(1) or s 7 was restricted to:

- (a) transporting, sending or delivering a controlled drug;
- (b) offering to transport, send or deliver a controlled drug;
- (c) doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
- (d) any combination of the aforementioned activities.

If this requirement is satisfied, the accused will be a "mere courier" (*Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 ("Zainudin") at [28] and

[34]). The second requirement is that the Prosecution must issue a Certificate of Substantive Assistance (“CSA”) to the accused.

Whether Iswan is a courier

9 I turn to consider the issue of whether Iswan is a courier. The definition of a courier is intended to be “tightly-defined” and interpreted narrowly (*Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 (“*Chum Tat Suan*”) at [63]; *Zainudin* at [54]–[55]). As categorically stated by the Court of Appeal in *Chum Tat Suan* (at [66]):

[i]t is ... abundantly clear that the statutory relief afforded under s 33B does not apply to those whose involvement with drugs extends beyond that of transporting, sending or delivering the drugs. ... it does not matter that the accused person’s involvement is of an ancillary nature. In Parliament’s view, an accused person is either involved *only* in the transporting, sending or delivering of the drugs and can therefore avail himself of the statutory relief of being a courier, or he is involved in more than those activities, in which case he cannot avail himself of the statutory relief of being a courier.

[emphasis in original]

10 Therefore, an accused person must prove that his role in the offence was restricted *only* to the transporting, sending or delivering of a controlled drug, or acts incidental or necessary thereto, in order to fall within the definition of a courier (see *Zainudin* at [2] and [29]). The only caveat is that a mere incidental act of storage or safekeeping by the accused person in the course of transporting, sending or delivering the drugs will not take him outside the definition of a courier (*Chum Tat Suan* at [67], referring to *Public Prosecutor v Abdul Haleem bin Abdul Karim and another* [2013] 3 SLR 734 at [55]).

11 The Defence submits that Iswan is a courier.² According to the Defence, the Drug Exhibits belonged to Zahari bin Samat (“Zahari”, also known as “Bob”), who had instructed Iswan to keep the Drug Exhibits for delivery to third parties.³ Iswan’s role was therefore limited to that of delivering the Drug Exhibits and incidental safekeeping for the purposes of delivery.⁴ The Defence further contends that Iswan “did not do anything more than he was asked to” and did not engage in acts such as dividing or packing the Drug Exhibits.⁵

12 The Prosecution submits that Iswan is not a courier.⁶ The Prosecution argues that Iswan has failed to prove, on a balance of probabilities, that his acts were limited to those incidental to the transporting, sending or delivering of the Drug Exhibits.⁷ This is because Iswan’s evidence as to the ownership of the Drug Exhibits and the purpose for which he had possessed the Drug Exhibits shifted substantially over the course of investigations and at trial.⁸ Even if Iswan’s final version of events (*ie*, that he had held all the Drug Exhibits for Zahari) is accepted, Iswan is not a mere courier for the following reasons: (a) he had sourced for the supplier of the Drug Exhibits for Zahari; and (b) he had the ability to set the price which Zahari had to pay for the drugs.⁹

13 In my view, Iswan is not a courier within the meaning of s 33B(2). There is clear evidence that Iswan had sourced for the Drug Exhibits from his supplier,

² Defence’s Further Submissions dated 26 September 2024 (“DFS”) at para 1.

³ DFS at paras 6–8.

⁴ DFS at paras 9–10.

⁵ DFS at para 11.

⁶ Prosecution’s Further Submissions dated 1 October 2024 (“PFS”) at para 6.

⁷ PFS at para 6.

⁸ PFS at paras 8–9.

⁹ PFS at para 12.

Joe Cartel. In Iswan's 5th and 6th investigation statements, he gave evidence that Zahari had asked him if he had a contact for the purchase of "panas", and Iswan had informed Zahari that he had a supplier who only sold a minimum of five "batus" of "panas". Iswan's 5th investigation statement reads as follows:¹⁰

A few weeks before 8 April 2020, 'Bob' called me and asked me if I had contact to buy three batu of 'panas'. I told him that my supplier only sells a minimum of 5 'batu' of 'panas'. 'Bob' informed me that he only have \$10000 with him and he does not have enough money to buy 5 'batu' of 'panas'. We both then discussed and we came to an agreement that 'Bob' will take three 'batu' of 'panas' while I will take two 'batu' of 'panas' and I will top up the remaining \$8000. Later, 'Bob' passed to me the \$10000 in cash.

[emphasis added]

Iswan's 6th investigation statement reads as follows:¹¹

... a few day[s] before 8 April 2020, Bob called me and asked about panas. Then in the conversation, I told him about my supplier only selling a minimum of 5 batu of 'panas'. Each batu will cost \$3000 plus Singapore dollars. In that conversation, Bob told me that he wanted to buy 4 batu and I will buy 1 batu. I agree with Bob and I placed my order with 'Joe Cartel'. After the conversation with Bob, I met Bob a few day[s] later at the vicinity of Beach Road. During that meet up, Bob passed me about \$15000 Singapore dollars. I did not count the money as I trusted Bob. I informed Bob that once I have received the panas, I will update him.

[emphasis added]

14 The sourcing of drugs will, on its own, take one out of the definition of a courier. In *Zainudin* (at [86]), the Court of Appeal observed that the sourcing for the supply of drugs is "plainly very far removed from the nature and objective of conveying drugs to a designated recipient" and instead concerns the expansion of the drug distribution network and the growth of the volume of drug

¹⁰ Agreed Bundle at pp 240–241 para 47.

¹¹ Agreed Bundle at p 245 para 50.

sales. In initiating contact with the drug supplier, Iswan cannot be said to have been performing acts which were merely facilitative or incidental to the transporting, sending or delivery of the drugs. This is supported by the decision of the Court of Appeal in *Rosman bin Abdullah v Public Prosecutor* [2017] 1 SLR 10 (“*Rosman bin Abdullah*”), where the Court of Appeal agreed with the High Court’s finding that the appellant was not a courier as he had not only actively sourced for the drugs in question but also actively participated in negotiations as a middleman or go-between regarding the price for the drugs and the terms of the delivery (*Rosman bin Abdullah* at [35]).

15 Additionally, even if Iswan did not act a middleman in the negotiations for the price of the Drug Exhibits (unlike the offender in *Rosman bin Abdullah* (at [34]–[35])), Iswan had the ability to determine the price which Zahari paid for the Drug Exhibits:¹²

Q Yes. Now, your explanation for---now would you agree with me that your explanation as to why you told the IO what is reflected in paragraph 26 concerning selling the *batu* to Bob, instead of giving the *batu* to Bob, and the \$3,500 from Bob was supposed to be returned to Joe Cartel for a loan, doesn’t make sense because you have also given an explanation to the IO as to why you had apparently sold one *batu* to Bob at discount. You agree with me it doesn’t make sense? Because you give an explanation.

A Your Honour, Bob paid me \$15,000 and I charged him \$3,000, so I did not profit anything. *I could have charged him 3,400 or 3,500 dollars and Joe Cartel wouldn’t know because--because I only need to return \$3,000 back to him.*

...

Q *You are saying now that you could have charged Bob more than \$3,000. So would you agree--so your position is that the price that Bob pays for the drugs is decided by you, correct?*

¹² PFS at para 13; Certified Transcript (31 January 2024) at p 21 lines 4 to 25.

A *Yes, correct.*

[emphasis added]

16 This would go towards showing that Iswan had some degree of decision-making power. It has been accepted that “a courier simply carries out instructions given to him and has practically no room for his own exercise of discretion or decision-making”, and thus, “if the acts carried out by the offender indicate that he possesses some executive decision-making power … then it is highly unlikely that he can be considered a mere courier” (*Zainudin* at [87]).

17 Given that Iswan’s acts had gone beyond that of merely “transporting, selling or delivering” the Drug Exhibits, I find that Iswan was not a courier. I therefore pass the mandatory death sentence on him.

Dedar Singh Gill
Judge of the High Court

Hon Yi, Yeo Zhen Xiong and Ariel Tan Hui Ru (Attorney-General’s Chambers) for the Prosecution;
Elengovan s/o V Krishnan (Elengovan Chambers) and Wong Hong Weng Stephen (Matthew Chiong Partnership) for the accused.
