IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 43

Court of Appeal / Originating Application No 5 of 2025 (Summons No 11 of 2025)

Between

Pannir Selvam Pranthaman

… *Applicant*

And

Attorney-General

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Stay of execution]
[Constitutional Law — Equal protection of the law]

Pannir Selvam Pranthaman
v
Attorney-General

[2025] SGCA 43

Court of Appeal — Originating Application No 5 of 2025 (Summons No 11 of 2025)
Sundaresh Menon CJ, Belinda Ang Saw Ean JCA, Woo Bih Li JAD, See Kee Oon JAD and Judith Prakash SJ
7 May, 6 August 2025

5 September 2025 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 The applicant, Mr Pannir Selvam Pranthaman, is a prisoner awaiting capital punishment ("PACP"). CA/SUM 11/2025 ("SUM 11") is his post-appeal application in a capital case ("PACC application") for a stay of his execution on two grounds.

2 The second of these grounds can be dealt with shortly. The applicant seeks a stay of his execution pending the determination of CA/SUM 16/2023 ("SUM 16") and, if SUM 16 is successful, the determination of CA/CA 2/2023 ("CA 2"). Those are proceedings brought by four other PACPs which engage the constitutionality of the presumptions in ss 18(1) and 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "MDA"). We have since dismissed

SUM 16 (see *Jumaat bin Mohamed Sayed and others v Attorney-General* [2025] SGCA 40). Accordingly, the applicant's second ground is now moot and we need say no more about it in this judgment.

3 As for his first ground, the applicant seeks a stay of his execution pending the determination of his complaint (the "Complaint") to the Law Society of Singapore (the "Law Society") against his former counsel, Mr Ong Ying Ping ("Mr Ong"). For the reasons set out in this judgment, we decline to stay the applicant's execution on this ground. We therefore dismiss SUM 11.

Background to the present application

The applicant's conviction, sentence and appeal

4 On 2 May 2017, the applicant was convicted by the High Court of a single charge under s 7 of the MDA of importing not less than 51.84g of diamorphine into Singapore. The court found that the applicant was a courier whose involvement in the offence fell within s 33B(2)(*a*)(i) of the MDA. However, as the Public Prosecutor did not issue a certificate of substantive assistance to him under s 33B(2)(*b*) of the MDA, the court sentenced the applicant to death (see *Public Prosecutor v Pannir Selvam Pranthaman* [2017] SGHC 144).

5 On 9 February 2018, this court dismissed the applicant's appeals against his conviction and sentence.

The first scheduling of the applicant's execution

6 Following the dismissal of his appeals against his conviction and sentence, the applicant, his family and his solicitors at the time submitted

petitions for clemency 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 his death sentence. They were also informed that the applicant would be executed on 24 May 2019.

7 On 21 May 2019, the applicant applied for 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 certificate of substantive assistance to him. On 23 May 2019, we allowed the application and stayed the applicant's execution.

The applicant's subsequent post-appeal applications

8 On 24 June 2019, the applicant applied for leave to commence judicial review proceedings challenging, among other things, the Public Prosecutor's decision not to issue a certificate of substantive assistance to him and the advice of the Cabinet of the Republic of Singapore to the President that the law should be permitted to take its course in relation to him. On 12 February 2020, the High Court dismissed the application for leave (see *Pannir Selvam a/l Pranthaman v Attorney-General* [2022] 3 SLR 838). The applicant's appeal was dismissed by us on 26 November 2021 (see *Pannir Selvam a/l Pranthaman v Attorney-General* [2022] 2 SLR 421).

9 The applicant continued thereafter to file other post-appeal applications. Of these, it suffices for present purposes to discuss only the following.

10 On 25 February 2022, the applicant filed HC/OS 188/2022 ("OS 188") along with 12 other PACPs. This was a civil action which arose after it was disclosed by the Attorney-General (the "AG") that certain correspondence belonging to each of the plaintiffs had been released by the Singapore Prison Service (the "SPS") to the Attorney-General's Chambers (the "AGC"). The plaintiffs sought a declaration that the actions of the SPS and the AG, in giving, receiving and/or requesting these documents were *ultra vires*. They also sought damages for, among other things, infringement of copyright and breach of confidence. On 1 July 2022, the General Division of the High Court granted nominal damages to three plaintiffs, not including the applicant, for infringement of copyright. The remaining prayers in OS 188 were dismissed.

11 On 29 July 2022, the plaintiffs in OS 188 appealed by way of CA/CA 30/2022 ("CA 30") against the decision of the General Division of the High Court. In the course of the hearing of CA 30, it emerged that, aside from the civil remedies they were seeking, the appellants were further seeking to impugn the validity of their convictions on account of the disclosures of their correspondence to the AGC. Because it was clear that this was not something the Court of Appeal exercising its civil jurisdiction could deal with in CA 30, we granted the appellants permission to bring criminal motions seeking relief under the criminal law to the extent that such motions arose from the disclosures (see *Pausi bin Jefridin v Public Prosecutor and other matters* [2024] 1 SLR 1127 ("*Pausi bin Jefridin*") at [2] and [8]).

12 Seven of the appellants in CA 30 subsequently brought criminal motions pursuant to this grant of permission (the "Seven Criminal Motions"). Among them was the applicant, who filed CA/CM 32/2023 ("CM 32") on 1 August 2023. CM 32 was an application for permission under s 394H of the Criminal

Procedure Code 2010 (2020 Rev Ed) (the "CPC") to review this court's dismissal of his appeals against his conviction and sentence. The Court of Appeal heard the Seven Criminal Motions together on both the permission and review stages, with the hearing proceeding as if permission had been given and the parties addressing the court on the full merits of the review applications (see *Pausi bin Jefridin* at [13]–[14]). On 1 August 2024, the Seven Criminal Motions were dismissed (see *Pausi bin Jefridin*).

13 On 11 October 2024, we allowed CA 30 in part, granting declarations that the AGC and the SPS had acted unlawfully by, respectively, requesting and disclosing the appellants' correspondence. We also found that the SPS and the AGC had acted in breach of confidence by, respectively, the disclosure and retention of the appellants' correspondence. However, we upheld the decision of the General Division of the High Court to award only nominal damages for infringement of copyright to the three appellants (see *Syed Suhail bin Syed Zin and others v Attorney-General* [2024] 2 SLR 588).

The Complaint

14 On 24 October 2024, the applicant lodged the Complaint with the Law Society under ss 75B and 85(1) of the Legal Profession Act 1966 (2020 Rev Ed) (the "LPA"). The Complaint concerns Mr Ong's handling of CM 32 and is premised upon the following allegations:

(a) Mr Ong had pressured and misled the applicant into signing a notice to act in person in CM 32 on 29 July 2024.

(b) Mr Ong had refused to represent the applicant in CM 32 just three days before the hearing on 1 August 2024.

(c) Mr Ong had misled the court as to why he was seeking to discharge himself as counsel in CM 32 by a letter to the court dated 29 July 2024.

(d) Mr Ong had continued to collect legal fees from the applicant's family on 29 July 2024 even after having the applicant sign the notice to act in person.

(e) Mr Ong had pressured the applicant to double the agreed legal fees from $5,000 to $10,000 by threatening to focus on other cases if the applicant did not pay more.

15 On 8 November 2024, the Law Society wrote to counsel for the applicant, Mr Too Xing Ji ("Mr Too"), to inform him that the applicant's complaint under s 75B of the LPA would be held in abeyance until the investigation into his complaint under s 85(1) had been concluded. On 13 January 2025, the Law Society further informed Mr Too that the applicant's complaint under s 85(1) of the LPA would be referred by the Council of the Law Society to the Chairman of the Inquiry Panel. The Chairman of the Inquiry Panel would constitute a two-man Review Committee to review the complaint. If the Review Committee recommended that the complaint be referred for an inquiry, it would be referred to a four-man Inquiry Committee appointed by the Chairman of the Inquiry Panel. On 25 February 2025, the Law Society confirmed to Mr Too that the Review Committee had since been constituted.

The second scheduling of the applicant's execution

16 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 was informed of the scheduled date of his execution on 16 February 2025.

The application for permission to make a PACC application

17 On 17 February 2025, the applicant filed CA/OA 5/2025 ("OA 5"), applying under s 60G of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA") for permission to make a PACC application. The contemplated PACC application was for a stay of the applicant's execution on the two grounds which are presently before us (see [2]–[3] above), as well as for the setting aside or an indefinite stay of his death sentence on the basis that the disclosures of his correspondence by the SPS to the AG had brought the administration of justice into disrepute.

18 On 19 February 2025, Woo Bih Li JAD, sitting as a single Judge of the Court of Appeal, summarily granted permission to the applicant to make a PACC application on the first two but not the third of his contemplated grounds. Woo JAD also ordered a stay of the applicant's execution pending the determination of his PACC application (see *Pannir Selvam Pranthaman v Attorney-General* [2025] 1 SLR 237).

The present PACC application

19 On 10 March 2025, the applicant filed SUM 11 pursuant to the grant of permission in OA 5.

20 The thrust of the applicant's case was initially that the Complaint amounted to a "relevant pending proceeding" under what he understood to be the policy of the Ministry of Home Affairs (the "MHA") on the scheduling of executions. The applicant accepted that the Complaint had no impact on his conviction and/or sentence. However, he submitted that it was sufficient that the Complaint would require his involvement through the provision of his testimony. For this, the applicant referred to what he understood and contended were the positions taken by the MHA and/or the AG in *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("*Syed Suhail (JR Leave)*"), *Syed Suhail bin Syed Zin v Attorney-General* [2021] 5 SLR 452 ("*Syed Suhail (JR)*") and *Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 ("*Datchinamurthy*"), relying on the descriptions of these positions in *Syed Suhail (JR Leave)* at [18], *Syed Suhail (JR)* at [25] and *Datchinamurthy* at [31]–[33] and [35]. More generally, the applicant also denied that the Complaint had been made with a deliberate view to delaying his execution or otherwise constituted an abuse of process. He asserted rather that the Complaint had been made in good faith and raised legitimate concerns warranting a full investigation.

The first hearing

21 When we first heard SUM 11 on 7 May 2025, we queried whether the applicant was asserting: (a) a freestanding right to see through the Complaint; or (b) a right to the equal application of the MHA's policy on the scheduling of executions. Counsel for the applicant, Mr Ng Yuan Siang ("Mr Ng"), informed us that the applicant was asserting both rights. He accepted, however, the focus of the applicant's case so far had been on the latter right.

22 Given that the applicant was asserting his right to the equal application of the MHA's policy, we considered that a clearer statement of that policy was necessary for the purposes of the present case. To be specific, greater clarity was required about the types of proceedings which, *despite having no impact on a PACP's conviction and/or sentence*, might nonetheless be regarded by the MHA as relevant proceedings pending which it would not, as part of its policy, schedule a PACP for execution. It was unsatisfactory, in our judgment, to attempt to discern the MHA's policy position from earlier cases in which this issue had not squarely arisen, much less from descriptions or reproductions of the MHA's positions in those cases. The crucial point was that *Syed Suhail (JR Leave)*, *Syed Suhail (JR)* and *Datchinamurthy* had all involved matters which could potentially affect the convictions and/or sentences (including the carrying out of the sentences) of the PACPs in question. Those cases were not concerned with the relevance or otherwise of proceedings which had no impact on a PACP's conviction and/or sentence, such as the Complaint.

23 In *Syed Suhail (JR Leave)* and *Syed Suhail (JR)*, Mr Syed Suhail bin Syed Zin ("Mr Suhail") challenged the scheduling of his execution ahead of other PACPs who had been sentenced to death prior to him. He alleged that his execution had been so scheduled because of a decision by the State not to execute foreigners while border restrictions owing to the COVID-19 pandemic were in place, as this prevented their family members from entering Singapore and the repatriation of their remains. On this basis, Mr Suhail argued that the scheduling of the executions of Singaporeans ahead of those of foreigners was an act of "discrimination based on expediency" that violated his right to equal protection under Art 12(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint). *Syed Suhail (JR Leave)* concerned Mr Suhail's application for leave to commence judicial review proceedings on this ground,

while *Syed Suhail (JR)* concerned his substantive application for judicial review. The salient point is that the proceedings in *Syed Suhail (JR Leave)* and *Syed Suhail (JR)* were concerned with the lawfulness of the carrying out of Mr Suhail's sentence of death in the alleged circumstances. The relevance of proceedings with no impact on a PACP's conviction and/or sentence (including its execution) was simply not in issue.

24 The PACP involved in *Datchinamurthy*, Mr Datchinamurthy a/l Kataiah ("Mr Datchinamurthy"), was one of the 13 plaintiffs in OS 188 (see [10] above). He sought leave to commence judicial review proceedings against the scheduling of his execution while OS 188 was still pending. The General Division of the High Court found that Mr Datchinamurthy had established a *prima facie* breach of Art 12(1) of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution") and allowed his application for leave to commence judicial review proceedings on that basis. It consequently ordered a stay of his execution pending the resolution of his judicial review application. We upheld the decision of the General Division of the High Court. The court considered that Mr Datchinamurthy had established a *prima facie* case that OS 188 was a relevant pending proceeding. As the other 12 plaintiffs in OS 188, with whom Mr Datchinamurthy was to be regarded as equally situated, did not appear yet to have been scheduled for execution, this shifted the evidential burden to the AG to provide justification for treating Mr Datchinamurthy differently. Yet, it did not appear that there was such justification in the circumstances.

25 Again, however, the significant point is that OS 188 was regarded in *Datchinamurthy* as having at least a potential impact on Mr Datchinamurthy's conviction and/or sentence. As this court observed, "it could not … be said that

in the present case, the correspondence that was the subject of OS 188 was completely *irrelevant* to [Mr Datchinamurthy's] conviction and sentence of death" [emphasis in original] because the court "could not speculate on what evidence would be adduced in respect of OS 188, and the effect that that evidence might have on [Mr Datchinamurthy's] arguments in respect of an alleged breach of Art 12(1)" (at [38]). Indeed, when the plaintiffs in OS 188 later appealed by way of CA 30 against the outcome of OS 188, they sought precisely to impugn the validity of their convictions on account of the disclosures of their correspondence (see [11] above), and Mr Datchinamurthy was among the seven appellants in CA 30 who thereafter brought criminal motions seeking relief. Until the Seven Criminal Motions were dismissed in *Pausi bin Jefridin* (see [12] above), the possibility could not be excluded that OS 188 would have an impact on the convictions and/or sentences of the seven appellants, including Mr Datchinamurthy. Thus, like *Syed Suhail (JR Leave)* and *Syed Suhail (JR)*, *Datchinamurthy* did not directly address the relevance of proceedings with no impact on or relevance to a PACP's conviction and/or sentence.

26 The importance of obtaining a clear statement of the MHA's policy position in the present case was heightened, in our view, by one further consideration. We recognised in *Syed Suhail (JR Leave)* that, "as the statutory scheme has made the scheduling of executions an executive and not a judicial function, some flexibility in scheduling was desirable and intended", subject of course to the qualification that "this flexibility must be exercised lawfully" (at [72]). Accordingly, as we went on to explain, it is incumbent on the State, having stated its position as to how executions were scheduled, to apply its criteria consistently, with departures from its stated baseline only permissible if there are legitimate reasons that weigh in a different direction (at [73]). This

being the case, it was necessary that we first clarified the MHA's policy so that we could ascertain whether it had been equally applied in favour of the applicant.

27 In the circumstances, we decided to adjourn SUM 11 for the AG to file a further affidavit setting out the MHA's policy position in greater detail. We also granted leave to the applicant to file an affidavit in reply and directed the parties to file supplemental written submissions thereafter.

The MHA's further affidavit

28 On 10 June 2025, the AG filed a further affidavit prepared by Mr Sanjay Nanwani ("Mr Nanwani"), a Senior Director in the Policy Development Division of the MHA, with the authorisation of the Minister of Home Affairs. Mr Nanwani's affidavit sets out the MHA's policy on the scheduling of executions in the following terms:

> 5 … There are two prerequisites that must be met before MHA will commence scheduling an execution. First, the sentence of death must stand after all due processes under the law affecting the offender's conviction and sentence have been concluded. Second, the Cabinet must have advised the President, in relation to the exercise of the power under Article 22P(1) of the Constitution of the Republic of Singapore (2020 Rev Ed), that the law should be allowed to take its course.
>
> 6 Once these prerequisites are met, MHA will have regard to various factors based on policy considerations, which include but are not limited to:
>
> (a) the date of pronouncement of the death sentence;
>
> (b) the determination of any other court proceedings affecting the prisoner or requiring his involvement;
>
> (c) the policy that co-offenders sentenced to death will be executed on the same day;
>
> (d) whether the prisoner had previously been scheduled to be executed; and

> (e) the availability of judges to hear any application by the prisoner to the courts before the intended date of execution.
>
> These factors were recognised by the Court of Appeal in *Syed Suhail bin Syed Zin v Attorney-General* [2020] SGCA 122 at [18].
>
> 7 I would like to elaborate on how some of these factors are applied. First and foremost, the key reference point is the date on which the prisoner was sentenced to death. All else being equal, prisoners are scheduled to be executed in the order in which they were sentenced to death.
>
> 8 Second, MHA will consider whether the prisoner is involved in any relevant pending court proceedings that would operate as a bar against scheduling his execution. In this regard, MHA's policy position is that:
>
> (a) a relevant pending proceeding is one that may affect the prisoner's conviction and/or sentence;
>
> (b) other proceedings (such as civil proceedings against third parties or disciplinary proceedings against Counsel), which are brought by the prisoner or on his behalf, which do not have an impact on the prisoner's conviction and/or sentence, will not be considered relevant; and
>
> (c) MHA will also consider whether the prisoner's testimony is required in any proceedings brought by the State. For instance, the prisoner may be required to give evidence as a witness in criminal proceedings, or may be a potential claimant in confiscation proceedings under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992. The extent to which his testimony is required will be assessed on a case-by-case basis.

For convenience, we hereafter refer to proceedings brought by the State as "State-brought proceedings". We refer to other proceedings, including those brought by a PACP or on his behalf, as "non-State-brought proceedings".

29 Mr Nanwani further states that the applicant was scheduled for execution in accordance with this policy. According to Mr Nanwani:

(a) The MHA scheduled the applicant for execution after he had exhausted all legal processes (including the clemency process) in relation to his conviction and sentence.

(b) In doing so, the MHA did not take into account an e-mail from Mr Too dated 6 February 2025 informing the SPS, among other things, about the pendency of the Complaint. Indeed, the MHA could not have done so because it had already scheduled the applicant for execution before that date.

(c) In any event, the MHA does not regard the Complaint as a relevant pending proceeding requiring the applicant's execution to be held in abeyance, because its outcome will not directly affect the propriety of his conviction and/or sentence.

The parties' cases

30 As mentioned above, the applicant initially submitted that the Complaint amounted to a relevant pending proceeding under the MHA's policy on the scheduling of executions (see [20] above). On this footing, his case, as clarified by Mr Ng before us, was that he was entitled to a stay on account of his right to the equal application of that policy (see [21] above).

31 In the light of Mr Nanwani's further affidavit, the applicant no longer contends that the Complaint amounts to a relevant pending proceeding under the MHA's policy. As before, he accepts that the Complaint has no impact on his conviction and/or sentence. Further, although he maintains that the Complaint will require his testimony, he acknowledges that even so, it does not constitute a relevant proceeding because it is a non-State-brought proceeding.

32 Instead, the applicant directly challenges the lawfulness of the MHA's policy on two main grounds:

(a) First, the applicant submits that the MHA has unlawfully changed its policy. In the past, any proceeding potentially requiring a PACP's testimony would have amounted to a relevant proceeding. No distinction was drawn by the MHA between State-brought and non-State-brought proceedings. However, under the MHA's current policy, a non-State-brought proceeding will not constitute a relevant proceeding unless it has an impact on the PACP's conviction and/or sentence. As a result of this policy change, PACPs are *now* being treated differently from how they were *previously* treated. This differential treatment is unsupported by any legitimate justification and therefore violates the applicant's right to equal treatment under Art 12(1) of the Constitution.

(b) Second, the applicant submits that the MHA's policy distinction between *State-brought* and *non-State-brought proceedings* results in the differential treatment of PACPs according to whether their testimony is required in the former or latter type of proceedings. Again, this differential treatment is unsupported by any legitimate justification and therefore violates the applicant's right to equal treatment under Art 12(1) of Constitution. In the alternative, the policy distinction is irrational or unreasonable and liable to be quashed.

33 The AG opposes the stay application. In the first place, he denies that the MHA's policy has undergone any change in substance. On the contrary, he submits that the policy described in Mr Nanwani's further affidavit has been consistently applied in several other cases.

34 The AG further submits that there is no legal basis, whether under the Constitution or the principles of judicial review, for the applicant to be granted a stay of his execution. This is because the applicant has no right under Art 9(1) of the Constitution to see through the Complaint. Moreover, the MHA's policy distinction between State-brought and non-State-brought proceedings cannot be regarded as inconsistent with Art 12(1) of the Constitution, or as illegal or irrational.

Issues to be determined

35 This being the first PACC application since the entry into force of the Post-appeal Applications in Capital Cases Act 2022 (No 41 of 2022) (the "PACC Act"), we first consider, preliminarily, whether Pt 5, Div 4 of the SCJA should be understood as having procedural or substantive effect. To be precise, we consider whether Pt 5, Div 4 establishes only the *procedure* for the making of a PACC application or, going further than this, whether it also confers freestanding *substantive rights* to seek a stay of execution of the death sentence imposed on the PACC applicant.

36 Having done that, we will then turn to the merits of the applicant's PACC application and examine his two grounds of challenge against the MHA's policy. First, we consider whether the MHA has unlawfully changed its policy. And next, we consider whether, in any event, the MHA's policy distinction between State-brought and non-State-brought proceedings is unlawful.

Whether Part 5, Division 4 of the SCJA has procedural or substantive effect

37 Part 5, Div 4 of the SCJA, which is titled "Post-appeal application in capital case and finding of abuse of process", was introduced by the PACC Act

on 29 November 2022 and came into effect on 28 June 2024. Under s 60F of the SCJA, a PACC application is defined as follows:

> **Interpretation of this Division**
>
> **60F.** In this Division, unless the context otherwise requires —
>
> **…**
>
> "post-appeal application in a capital case" or "PACC application" means any application (not being a review application) —
>
> (*a*) made by a PACP after the relevant date; and
>
> (*b*) to which either of the following applies:
>
> (i) the application is for a stay of the execution of the death sentence on the PACP;
>
> (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;
>
> *Examples*
>
> Examples of an application made by a PACP the determination of which 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 are —
>
> (*a*) an application challenging the President's order;
>
> (*b*) an application challenging the manner in which the death sentence is to be carried out;
>
> (*c*) an application challenging the imposition of the sentence of death as a form of punishment (such as an application alleging that the death penalty is an unlawful deprivation of life under Article 9(1) of the Constitution);
>
> (*d*) an application challenging the Public Prosecutor's decision not to certify that the PACP has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore, under section 33B(2)(*b*) of the Misuse of Drugs Act 1973; and

> (*e*) an application challenging the Public Prosecutor's decision to institute and conduct proceedings against the PACP for an offence punishable with death.
>
> …

38 It suffices for present purposes to observe that a PACC application will, by definition, be: (a) an application for a stay of the execution of the PACP's death sentence; or (b) an application the determination of which 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. As we have noted above, the question that arises is whether Pt 5, Div 4 serves only to regulate the *procedure* by which a PACC application is to be made on grounds that are rooted in *other* laws or rights, or whether it independently also creates and confers an independent *substantive right* to seek a stay of execution of the PACP's death sentence. As already alluded to, in the former but not in the latter case, the substantive grounds underlying the PACC application would have to be found elsewhere.

39 In our judgment, Pt 5, Div 4 of the SCJA can only be plausibly understood as having procedural effect. On a plain reading, it is concerned entirely with the procedure by which a PACC application is to be made. Broadly speaking, Pt 5, Div 4 provides that such an application must be made to and with the permission of the Court of Appeal (see ss 60H(1) and 60G(1) of the SCJA). To this end, it also deals with various procedural matters relating to applications for permission to make PACC applications or to the actual PACC applications, such as the applicable timelines (ss 60G(2)–60G(6) and 60H(1)–60H(4) of the SCJA, read with O 24A rr 2 and 3 of the Rules of Court 2021), the written submissions and/or documents to be filed by the parties (see ss 60G(4), 60G(5), 60H(2) and 60H(3) of the SCJA, read with O 24A r 2(2)–

2(4), 2(10), 2(12), 3(3) and 3(5) of the Rules of Court 2021) and the possibility of summary determination by the Court of Appeal (ss 60G(8) and 60H(6) of the SCJA). On its face, there is simply no indication that Pt 5, Div 4 goes further than this by creating substantive rights to certain reliefs.

40 This view is fortified by the Examples in s 60F of the SCJA (see [37] above), which indicate that the substantive grounds underlying a PACC application are to be found outside Pt 5, Div 4. The substantive ground underlying Example (*c*) is expressly identified as Art 9(1) of the Constitution. The remaining Examples, meanwhile, are of familiar kinds of applications which have previously been grounded in the Constitution and/or the principles of judicial review (see, for instance, *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189, *Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883, *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 and *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49). In short, none of the Examples suggest that the substantive grounds underlying a PACC application may be found in Pt 5, Div 4 of the SCJA itself.

41 This analysis is not undermined, in relation to PACC applications for a stay of the execution of the PACP's death sentence, by s 60L of the SCJA:

> **Stay of execution of death sentence**
>
> **60L.** Despite anything in this Act or any other written law, a stay of execution of the death sentence may only be granted by the Court of Appeal.

Although s 60L implicitly confirms that the Court of Appeal (and only the Court of Appeal) has the power to grant such a stay, it is silent on the substantive grounds on which this power is to be exercised. Again, therefore, it does not

suggest that these substantive grounds are to be found within Pt 5, Div 4 of the SCJA. The only argument that might be advanced against this conclusion is the fact that the definition of a PACC application in s 60F includes an application for a stay of execution of the death sentence, and when read with s 60L it might be suggested that the Court of Appeal is thereby vested with a freestanding independent power to stay the execution of the death sentence. There are two difficulties with this, which together are insuperable. First, there is nothing at all in the PACC Act which sets out the grounds on which such a notional power is to be exercised by the Court of Appeal. This would suggest that no such power was thereby granted by the PACC Act. The only other option is that such a power was granted, but on terms that it was a wholly unconstrained discretionary power, but this leads us to the second point.

42 If it were the case that Parliament had intended to confer on the Court of Appeal, an independent and freestanding power to stay the execution of a death sentence in its unconstrained discretion, this would have been such a significant change of the hitherto settled law in this area that it would have been specifically highlighted in the Parliamentary debates. But there is in fact not the slightest hint of this at all. Instead, our understanding of Pt 5, Div 4 of the SCJA is consistent with and reflected in the essentially procedural terms in which the Post-appeal Applications in Capital Cases Bill (Bill No 34/2022) (the "PACC Bill") was described during its second reading. Senior Parliamentary Secretary to the Minister for Law, Ms Rahayu Mahzam ("Ms Rahayu"), stated that the PACC Bill consisted of "measures to provide a *process* for post-appeal applications in capital cases" [emphasis added] and that "Clause 2 introduces a new *procedure* in the Supreme Court of Judicature Act 1969, or SCJA, for post-appeal applications in capital cases, or PACC applications" [emphasis added] (Singapore Parl Debates; Vol 95, Sitting No 77; [29 November 2022] (Rahayu

Mahzam, Senior Parliamentary Secretary to the Minister for Law). No suggestion can be drawn from Ms Rahayu's remarks to the effect that the PACC Act in general, or Pt 5, Div 4 of the SCJA in particular, was intended to have substantive effect or to confer independent rights to seek relief.

43 For these reasons, we are satisfied that Pt 5, Div 4 of the SCJA only establishes the procedure by which a PACC application is to be made. The substantive grounds underlying such an application must be found elsewhere, such as in the fundamental liberties protected by the Constitution or the usual principles of judicial review (see *Syed Suhail (JR Leave)* at [48]).

Whether the MHA has unlawfully changed its policy on the scheduling of executions

44 We turn to the merits of the applicant's PACC application, beginning with his first ground of challenge against the MHA's policy on the scheduling of executions. The factual premise underlying the applicant's first ground is that the MHA has changed its policy. In support of this contention, the applicant refers particularly to two affidavits, dated 28 September 2020 and 19 November 2020, which were filed by the AG in *Syed Suhail (JR Leave)* and *Syed Suhail (JR)* respectively. These affidavits were prepared by Mr Lim Zhi Yang ("Mr Lim"), a Senior Director in the Policy Development Division of the MHA, with the authorisation of the Minister of Home Affairs. In both affidavits, Mr Lim described the MHA's policy in the following terms:

> 6 There are two key prerequisites before the MHA will commence scheduling the execution of a sentence of death:
>
> (a) First, the sentence of death must stand after all due processes under the law affecting the offender's conviction and sentence have been concluded. In the case of an offender on whom the sentence of death is imposed after trial, the sentence must be upheld by the

> Court of Appeal after the offender has exhausted all rights of appeal against his conviction and/or sentence; if there is no appeal, the sentence must be upheld by the Court of Appeal pursuant to a review under Division IA of Part XX of the CPC. Where the sentence of death is imposed only on appeal, there is no right of further appeal.
>
> (b) Second, the Cabinet must have advised the President, in relation to the exercise of the power under Art 22P(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint), that the law should be allowed to take its course.

7 Once these prerequisites are met, scheduling will be done by reference to the resolution of various supervening factors based on policy considerations, which include:

> (a) the dates on which the sentences of death were pronounced on offenders;
>
> (b) the determination of any court proceedings other than those in [6(a)] affecting the offender, whether or not the offender is a litigant (e.g. confiscation proceedings under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed), forfeiture proceedings under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) …, or proceedings in which the offender's testimony may be required);
>
> (c) whether there are co-offenders sentenced to death. Where co-offenders have been sentenced to death, the execution of the sentences will be scheduled on the same date;
>
> (d) whether the offender had previously been scheduled to have his sentence carried out, though such sequencing in such situations may not always be possible, when for example, it is difficult to change the existing schedules; and
>
> (e) the availability of judges to hear any legal application by the offender before the intended date for the execution of the sentence.

The contents of these affidavits were referred to in *Syed Suhail (JR Leave)* at [18] and *Syed Suhail (JR)* at [25].

45 The applicant submits that the policy now set out in Mr Nanwani's further affidavit (see [28] above) is irreconcilable with the policy earlier described in Mr Lim's affidavits. He develops this submission in the following way. Under the policy described by Mr Lim, any proceeding potentially requiring a PACP's testimony would have been regarded as relevant by the MHA. No distinction was drawn in this regard between State-brought and non-State-brought proceedings. However, under Mr Nanwani's formulation of the policy, a proceeding requiring a PACP's testimony will only be regarded as relevant if it is a State-brought proceeding, unless it has an impact on the PACP's conviction and/or sentence. To illustrate the difference, a non-State-brought proceeding which has no impact on a PACP's conviction and/or sentence, but which requires his testimony, would have constituted a relevant proceeding under the policy described by Mr Lim but not under the policy described by Mr Nanwani.

46 The AG denies that the MHA has changed its policy in any way. He accepts that "there may be differences in the language used" in the respective affidavits of Mr Lim and Mr Nanwani. However, he maintains that there is no difference in substance between their descriptions of the MHA's policy, and that Mr Nanwani merely elaborates on the position earlier set out by Mr Lim by specifying the types of proceedings which the MHA regards as relevant or irrelevant.

47 To buttress the claim that the MHA's policy has remained consistent over time, the AG observes that several other PACPs were scheduled for execution even during the pendency of proceedings brought by them. These include the PACPs in *Datchinamurthy*, *Roslan bin Bakar v Attorney-General* [2024] 2 SLR 433 ("*Roslan*"), *Masoud Rahimi bin Mehrzad v Public Prosecutor*

[2024] SGCA 56 ("*Masoud*"), *Moad Fadzir bin Mustaffa v Public Prosecutor* [2024] 1 SLR 825 and *Mohammad Azwan bin Bohari v Public Prosecutor* [2024] 1 SLR 1271. Most relevantly, the PACPs in *Roslan* and *Masoud* were also among the seven appellants in CA 30 who brought criminal motions seeking to impugn the validity of their convictions (see [10]–[12] above). They were likewise represented by Mr Ong and subsequently lodged similar complaints with the Law Society about his handling of their criminal motions. Nonetheless, they were scheduled for execution and duly executed while those complaints were pending.

48 We do not consider it necessary to resolve this disagreement between the parties. First, we reiterate the point we have already made as to why we felt the need to seek the MHA's clarification of what its policy is where it concerns pending proceedings that have no possible relevance to the PACP's conviction and/or sentence. This difference more than explains any difference in the terms of how the MHA has framed its policy. But aside from this, assuming in the applicant's favour that the MHA *has* changed its policy in the manner he alleges, the short point is that there is nothing *inherently* objectionable about this. Putting the point more generally, the State is obviously entitled to change its policies *unless the change can be shown to be unlawful on some specified legal ground*. Thus, in the present case, it remains incumbent on the applicant to demonstrate the unlawfulness of the MHA's alleged policy change. In our judgment, he has not succeeded in doing this.

49 The applicant's primary challenge against the MHA's policy change rests on Art 12(1) of the Constitution. He submits that, because of the change, PACPs are now being treated differently from how they were previously treated. Because the MHA has failed to articulate any reasons, let alone any legitimate

reasons, to justify this differential treatment, it is inconsistent with his right to equal treatment under Art 12(1).

50 This submission is utterly misconceived because it misunderstands the scope and operation of Art 12(1). As we observed in *Syed Suhail (JR Leave)*, citing the Privy Council's remarks in *Ong Ah Chuan and another v Public Prosecutor* [1979-1980] SLR(R) 710 (at [35]), Art 12(1) assures to the individual "the right to equal treatment with other individuals in similar circumstances" (at [43]). To this end, Art 12(1) ensures that an individual is not treated differently from other equally situated persons *at a particular point in time*. It is not, however, concerned to ensure the equal treatment of an individual *from one point in time to another*. On the applicant's understanding of Art 12(1), a change in policy by the State would *always* amount to differential treatment requiring justification by the State. This is self-evidently incorrect.

51 During the second hearing of this matter on 6 August 2025, Mr Ng tentatively suggested that the MHA's policy change was also inconsistent with the applicant's legitimate expectation that the Complaint would be regarded as a relevant proceeding. However, as we observed to Mr Ng, there was no conceivable basis apart from Art 12(1) of the Constitution on which this legitimate expectation could be said to have arisen. This submission was therefore a mere reinvention of his argument under Art 12(1). Moreover, even on the assumption that the doctrine of substantive legitimate expectations forms part of Singapore law, which remains an open question (see *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [59]) outside the exceptional circumstances justifying its limited recognition in *Tan Seng Kee v Attorney-General and other appeals* [2022] 1 SLR 1347 (at [117] and [132]), the MHA had clearly not made any unequivocal and unqualified statement or

representation to the applicant so as to engender a legitimate expectation on his part (see *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 at [119(a)]). Mr Ng rightly did not pursue this argument further when we put these observations to him.

52 For these reasons, even if the MHA has changed its policy on the scheduling of executions, the applicant has failed to identify any basis on which to impugn the lawfulness of that change. We therefore reject his first ground of challenge.

Whether the MHA's policy distinction between State-brought and non-State-brought proceedings is unlawful

53 We turn to the applicant's second ground of challenge, which centres on the MHA's policy distinction between State-brought and non-State-brought proceedings. The applicant submits that this distinction is unlawful for violating Art 12(1) of the Constitution or, in the alternative, for being irrational or unreasonable.

54 For ease of reference, we reproduce again the relevant part of Mr Nanwani's further affidavit:

> 8 Second, MHA will consider whether the prisoner is involved in any relevant pending court proceedings that would operate as a bar against scheduling his execution. In this regard, MHA's policy position is that:
>
> (a) a relevant pending proceeding is one that may affect the prisoner's conviction and/or sentence;
>
> (b) other proceedings (such as civil proceedings against third parties or disciplinary proceedings against Counsel), which are brought by the prisoner or on his behalf, which do not have an impact on the prisoner's conviction and/or sentence, will not be considered relevant; and

> (c) MHA will also consider whether the prisoner's testimony is required in any proceedings brought by the State. For instance, the prisoner may be required to give evidence as a witness in criminal proceedings, or may be a potential claimant in confiscation proceedings under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992. The extent to which his testimony is required will be assessed on a case-by-case basis.

55 In our view, the MHA's policy position on the relevance of pending proceedings may be usefully understood in terms of two distinctions. The first distinction is that between: (a) proceedings which may affect a PACP's conviction and/or sentence, which are always regarded as relevant without more; and (b) proceedings which have no impact on a PACP's conviction and/or sentence, which are ordinarily not regarded as relevant (see [56] below). The applicant rightly does not take issue with this first distinction. In our judgment, proceedings with a potential impact on the PACP's conviction and/or sentence necessarily stand apart from all other proceedings because they may eventuate in the setting aside of the PACP's death sentence or, at minimum, a finding that it may not be lawfully carried out in the circumstances at hand. For obvious reasons, it would be invidious for a PACP to be scheduled for execution while such proceedings remain pending. Thus, as we acknowledged in *Syed Suhail (JR Leave)*, if grounds for a further legal challenge emerge from new evidence to justify reopening a PACP's conviction, he "would of course be entitled to file a further challenge in accordance with the relevant procedures, *and his execution could not proceed until this challenge was fully disposed of*" [emphasis added] (at [68]).

56 In relation to proceedings which have no impact on a PACP's conviction and/or sentence, the starting point is that these are not regarded as relevant by the MHA. This position is subject, however, to a limited exception where the

proceeding is a State-brought proceeding which requires the PACP's testimony. In other words, the MHA draws a second distinction at this juncture between: (a) State-brought proceedings, which may be regarded as relevant if they require a PACP's testimony; and (b) non-State-brought proceedings, which are not regarded as relevant proceedings even if they require a PACP's testimony. It is this second distinction which the applicant challenges as unlawful.

57 We begin with the applicant's challenge under Art 12(1) of the Constitution. In *Syed Suhail (JR Leave)*, this court held that whether the scheduling of a PACP's execution breaches Art 12(1) would turn on: (a) whether it resulted in the PACP being treated differently from other equally situated persons; and (b) whether this differential treatment was reasonable in that it was based on legitimate reasons (at [62]). If the PACP can discharge his evidential burden of satisfying the first limb of this test, this would shift the burden to the State to provide justification for the differential treatment under the second limb (at [61]).

58 The applicant submits that the MHA's policy distinction results in the differential treatment of PACPs according to whether their testimony is required in State-brought proceedings or non-State-brought proceedings. Because this differential treatment has not been and cannot be shown to be reasonable, it is inconsistent with the applicant's right to equal treatment under Art 12(1) of the Constitution.

59 We reject this submission. In the first place, we stress that PACPs are persons who have been sentenced to death in accordance with law and whose convictions and sentences have been upheld by the Court of Appeal following an appeal or review. Moreover, in so far as the distinction between State-

brought and non-State-brought proceedings is of any relevance, we are necessarily concerned with PACPs in relation to whom there are no other pending proceedings that may affect their convictions and/or sentences. The starting point in the circumstances is that the State is entitled to deprive them of their lives, subject to the qualification that this must be carried out in accordance with law (see *Syed Suhail (JR Leave)* at [47]–[48]). The principle of finality, which has been described by this court as "an integral part of justice" (see *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 at [1]), requires nothing less. To be sure, the carrying into effect of a sentence of death will necessarily prevent a PACP from seeing through any pending proceedings in which he might be interested, including proceedings which have been brought by him (or on his behalf) and which may require his testimony. However, as PACPs stand in a very different position from other persons who have not lost their right to life by reason of a lawfully imposed death sentence, this cannot be regarded as intrinsically objectionable.

60 Against this backdrop, the only question is whether it is legitimate for the MHA to recognise a limited exception in relation to State-brought proceedings without extending the same exception to non-State-brought proceedings. In our judgment, the answer is unequivocally in the affirmative. The first and fundamental distinction is that State-brought proceedings seek to vindicate the public interest and not the private interests of any individual PACP. In addition, as a PACP has no control over the commencement or conduct of a State-brought proceeding, there is no danger that such proceedings will be used as a means of indefinitely impeding the carrying out of his sentence. As against this, there is no limit to the number of proceedings which may be brought by a PACP (or on his behalf), and which might be said to require his testimony. In view of the clear differences between these two kinds of

proceedings, we do not accept that PACPs whose testimony may be required in non-State-brought proceedings are equally situated to PACPs whose testimony is required in State-brought proceedings. Moreover, even if these two groups of PACPs were to be regarded as equally situated, any differential treatment has, in our view, been amply shown to be reasonable because of the different types of interest at stake as well as because of the principle of finality.

61 The applicant further attacks the distinction between State-brought and non-State-brought proceedings in the particular context of disciplinary proceedings under the LPA. He submits that all such disciplinary proceedings are brought in the public interest to protect the administration of justice and to uphold the integrity of the legal profession. This being the case, there is no basis to distinguish between complaints made by the AG or some other officeholder under s 85(3) of the LPA and complaints made by the PACP himself. All such complaints, argues the applicant, should be regarded as relevant proceedings if they require the testimony of the PACP.

62 Contrary to the applicant's submission, however, the MHA's policy does not distinguish between disciplinary proceedings according to the identity of the complainant. Even if a *complaint* is made by the AG or some other officeholder, it is not the State but the Law Society which is responsible for *bringing* these disciplinary proceedings in the public interest. It follows that such disciplinary proceedings are non-State-brought proceedings, and so, as a general rule, would not, even if they required the testimony of a PACP, amount to relevant proceedings. Of course, being a matter of policy, there will be room for discretion to be exercised lawfully in a given case, where this is thought to be appropriate, but the starting point is that such proceedings are non-State-brought-proceedings and therefore not relevant proceedings. Counsel for the

AG, Mr Terence Chua Seng Leng, confirmed this understanding of the MHA's policy. This being the case, it may well be necessary for the Law Society, as the entity charged with upholding the public interest in this context, to take appropriate measures where a PACP's testimony is required in a pending disciplinary proceeding. For example, it may be necessary for the Law Society to expedite these proceedings or to take steps to record or otherwise preserve the evidence of the PACP before he is executed. Mr Ng accepted, when we put the point to him, that there was no reason why this could not be done.

63 Leaving aside Art 12(1) of the Constitution, the applicant also submits that the MHA's policy distinction between State-brought and non-State-brought proceedings is irrational or unreasonable. However, the applicant advances no distinct arguments under this head and it is evident that this submission adds nothing to his submission under Art 12(1). In view of the clear differences between the two kinds of proceedings that we have identified earlier (see [60] above), the MHA's policy distinction is plainly not irrational or unreasonable.

64 For these reasons, the MHA's policy distinction between State-brought and non-State-brought proceedings is not unlawful, whether for violating Art 12(1) of the Constitution or for being irrational or unreasonable. We therefore also reject the applicant's second ground of challenge.

Conclusion

65 In conclusion, there is no basis for us to stay the applicant's execution pending the determination of the Complaint. As it is also now moot whether we should stay his execution pending the determination of SUM 16 (and, if successful, CA 2), we dismiss SUM 11.

66 We make a final observation, which is that nothing in this judgment undercuts the court's inherent jurisdiction and power to grant a stay in exceptional circumstances. This follows also from our conclusion that the PACC Act is concerned only with the procedure governing the making of a PACC Application. However, we reiterate our previous observation that there is a high threshold to be crossed before this may be successfully invoked, and it will be incumbent on the applicant to demonstrate how this high threshold has been crossed.

Sundaresh Menon
Chief Justice

Belinda Ang Saw Ean
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Judith Prakash
Senior Judge

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Terence Chua Seng Leng, Wuan Kin Lek Nicholas (Yin Jianli) and Darren Ang Jin Wee (Attorney-General's Chambers) for the respondent.
