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

[2025] SGHC 229

Criminal Motion No 41 of 2025

Between

Paulus Tannos

… *Applicant*

And

The State

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Extradition — Bail]

Paulus Tannos
v
The State

[2025] SGHC 229

General Division of the High Court — Criminal Motion No 41 of 2025
Sundaresh Menon CJ
2 October 2025

21 November 2025

Sundaresh Menon CJ:

Introduction

1 When would a fugitive apprehended under the Extradition Act 1968 (2020 Rev Ed) ("Extradition Act") be considered "sick or infirm" and thus eligible for release on bail? As I explain below, this is one of a limited set of grounds specified in the applicable legislative provisions, upon which the court may release such a person on bail. In answering the question posed at the outset, it is crucial to bear in mind the important public interest in ensuring that such persons will be available when needed so as to ensure that Singapore is able to comply with her obligations under extradition treaties to which she is party. The District Judge below ("DJ") held that to be considered "sick or infirm", a fugitive must suffer from an illness that could not reasonably be managed in prison and, on this basis, refused to grant the applicant bail. The applicant thereafter brought HC/CM 41/2025 ("CM 41") seeking that I exercise my

revisionary jurisdiction and release him on bail. The applicant contended that the words "sick or infirm" must be given their plain and natural meaning and so should be construed as referring to any sickness or infirmity or, in the alternative, to a pre-existing ailment that is not of a trivial nature. After hearing the parties, I rejected these interpretations because they were illogical, unworkable and/or did not provide manageable standards that could readily be applied by a court. In my judgment, the DJ had not erred in her decision and there was accordingly no basis for me to exercise my revisionary jurisdiction. I therefore dismissed CM 41. These are my detailed grounds of decision.

The facts

2 The applicant, Mr Paulus Tannos (the "Applicant"), is a 71-year-old male born in Indonesia. He became a permanent resident of Singapore in 1999.

3 On 17 January 2025, the Applicant was arrested by officers from the Corrupt Practices Investigation Bureau. The warrant of apprehension for the Applicant's arrest was issued pursuant to s 12(1) of the Extradition Act. The Applicant was informed that the Republic of Indonesia ("ROI") had intimated its intention to apply for his extradition there. The Applicant has been remanded in Changi Prison since then.

4 On 20 February 2025, the ROI issued a formal extradition request in respect of the Applicant. The extradition request was for the Applicant to be produced in the ROI to answer a charge in respect of an alleged corruption offence that related to the procurement of goods and services for the National Resident's Identity Number-based Electronic Card project (otherwise known as the *Kartu Tanda Penduduk Elektronik Berbasis Nomor Induk Kependudukan* project or "e-KTP Project") between 2011 and 2013. The e-KTP Project sought

to establish for all Indonesian residents a single digitised identification system. The Republic of Indonesia State Printing Consortium (otherwise known as the *Konsorsium Percetakan Negara Republik Indonesia* or "PNRI Consortium") had been formed for the purpose of participating in the tender for the e-KTP Project. The Applicant was the President Director of one of the companies in the PNRI Consortium. It was alleged that the Applicant had agreed to pay bribes to ensure that the tender for the e-KTP Project would be awarded to the PNRI Consortium. After the tender for the e-KTP Project was awarded to the PNRI Consortium, the Applicant allegedly participated in the payment of bribes to officials from the Ministry of Home Affairs of the ROI as well as to members of the House of Representatives of the ROI. This formed the subject matter of the corruption offence with which the Applicant was charged.

5 On 11 March 2025, the Applicant applied to be released on bail on the basis that he was sick or infirm.

Decision below

6 On 16 June 2025, the DJ delivered an oral judgment (the "OJ") dismissing the application for bail (OJ at [37]). The DJ held that the Applicant bore the burden of showing why bail should be granted, and had failed to discharge it (OJ at [13] and [36]).

7 First, the Applicant was not "sick" or "infirm" within the meaning of r 6(1)(*b*) of the Criminal Procedure Rules 2018 ("CPR"), which might have provided an exception to the default rule that bail was not generally available to persons like the Applicant who were apprehended under the Extradition Act (OJ at [4] and [6]). The DJ construed the words "sick" or "infirm" to refer to a sufficiently serious illness that cannot reasonably be managed in prison, in the

light of the legislative intent that bail should only be granted to fugitives in special circumstances (OJ at [18]). Based on the affidavits and medical reports filed, the DJ concluded that the Applicant did not suffer from any medical conditions of such gravity that the Singapore Prison Service ("SPS") could not reasonably manage them (OJ at [23]–[26]).

8 Second, the DJ would not have exercised her discretion to grant the Applicant bail even if he was sick or infirm as she took the view that he was a high flight risk (OJ at [34]). The DJ considered that the circumstances in which the Applicant came to be in possession of multiple passports gave rise to suspicions that he might use these to flee; the Applicant could sustain himself overseas for prolonged periods; the Applicant lacked strong roots in Singapore; and e-tagging was not infallible (OJ at [30]–[33]).

The parties' arguments

9 In written submissions filed on his behalf in CM 41, the Applicant contended that the words "sick or infirm" under r 6(1)(*b*) of the CPR should be given their plain and ordinary meaning. In oral submissions before me, counsel for the Applicant, Mr Suang Wijaya ("Mr Wijaya"), submitted that the words "sick or infirm" could, in the alternative, refer to a pre-existing ailment that was not of a trivial nature. It was submitted that having regard to his age and medical conditions, the Applicant should be considered "sick or infirm" within the meaning of r 6(1)(*b*) of the CPR. Aside from this, the Applicant contended that if the words "sick or infirm" were read narrowly to refer to a sickness or infirmity that cannot reasonably be managed by the SPS, he would be at a severe disadvantage because he had not been permitted to undergo a medical assessment by a doctor of his choosing in order to demonstrate the inadequacy of the medical care he was receiving in prison. The Applicant also averred that

he was not a flight risk because he had strong ties to Singapore and was willing to cooperate with the authorities. In the alternative, the Applicant contended that the court should exercise its inherent powers under s 97 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") to grant him bail.

10 The State, on the other hand, submitted that the key words "sick or infirm" were properly limited to cases of serious illness or physical weakness that cannot reasonably be managed by the SPS. The Applicant did not meet this threshold because his medical conditions were stable and were being adequately managed by the SPS. In any case, if the Applicant was "sick or infirm", the State contended that the court should nonetheless not release him on bail primarily because there was a high risk of flight. The Applicant had weak ties to Singapore, possessed the resources and means to abscond, and had a strong incentive to do so since the alleged corruption offence entailed severe punishments.

Issues to be determined

11 The following issues arose for my determination:

(a) What is the appropriate test for determining whether a person is "sick or infirm" for the purposes of r 6(1)(*b*) of the CPR?

(b) Was the Applicant "sick or infirm" within the meaning of r 6(1)(*b*) of the CPR?

(c) If the Applicant was "sick or infirm" within the meaning of r 6(1)(*b*) of the CPR, did the DJ err in refusing to grant bail to the Applicant?

(d) If the Applicant was not "sick or infirm" within the meaning of r 6(1)(*b*) of the CPR, did I have the inherent power to nonetheless grant him bail?

The DJ's decision to refuse to grant bail to the Applicant did not contain any error

12 It was common ground that CM 41, which concerned a request to me for bail after this had been refused by the State Courts, was an application that I invoke my revisionary jurisdiction (see *Muhammad Feroz Khan bin Abdul Kader v Public Prosecutor* [2023] 4 SLR 1062 ("*Feroz*") at [23]). The General Division of the High Court ("High Court") will exercise its revisionary jurisdiction sparingly. It is typically invoked in circumstances where an appeal does not lie, and two conditions must be satisfied before a court will exercise such jurisdiction. The first is that the decision or order made by the judge below must contain some error, absent which there will be no room for invoking the court's revisionary jurisdiction. However, because I was concerned with the exercise of the revisionary jurisdiction and not the appellate jurisdiction, showing the presence of an error was necessary but insufficient to warrant my invoking it. This leads to the second condition, which is that material and serious injustice must be shown to follow from the error. Put another way, the applicant must show that there is something so clearly wrong with the lower court's decision that it casts doubt on that court's exercise of judicial power (see *Xu Yuanchen v Public Prosecutor and another matter* [2021] 4 SLR 719 at [20]–[21]). This is plainly a high threshold, which is unsurprising where, as here, I was dealing with the review of a decision against which there was no provision for appeal.

13 Before delving into the issues proper, it would be useful to set out the relevant statutory provisions that govern the High Court's power to grant bail to a fugitive apprehended under the Extradition Act.

The High Court's power to grant bail to a fugitive apprehended under the Extradition Act is found in s 97(1)(a) of the CPC and circumscribed by s 95 of the CPC read with r 6 of the CPR

Sections 95 and 97(1)(a) of the CPC and r 6 of the CPR

14 The power of the High Court to grant bail is provided for in s 97 of the CPC. Section 97(1)(*a*), which is the relevant provision here, states as follows:

> **Powers of General Division of High Court regarding bail**
>
> **97.**—(1) *Subject to section 95(1) and subsection (2)*, at any stage of any proceeding under this Code, the General Division of the High Court may —
>
> (*a*) release any accused before the General Division of the High Court on bail, on personal bond, or on bail and on personal bond;
>
> …
>
> [emphasis added]

15 Section 97(1) makes clear that the powers of the High Court set out there are subject to s 95 of the CPC. This latter provision applies to, among other persons, persons accused of extradition offences who have been arrested or taken into custody pursuant to a warrant issued or endorsed under the Extradition Act. I reproduce s 95 of the CPC for ease of reference:

> **Exceptions to bail or release on personal bond**
>
> **95.**—(1) An accused must not be released on bail or on personal bond if —
>
> (*a*) the accused is charged for an offence punishable with death or imprisonment for life;
>
> (*b*) the accused is accused of any non-bailable offence, and the court believes, on any ground

> prescribed in the Criminal Procedure Rules, that the accused, if released, will not surrender to custody, be available for investigations or attend court; or
>
> (*c*) the accused has been arrested or taken into custody under a warrant issued under section 12 or 34 of the Extradition Act 1968 or endorsed under section 33 of that Act.
>
> (2) Despite subsection (1), the court may —
>
> (*a*) direct that any juvenile or any sick or infirm person accused of such an offence be released on bail;
>
> (*b*) release on bail an accused charged with an offence mentioned in subsection (1)(*a*), if —
>
> (i) the offence is also punishable with an alternative punishment other than death or life imprisonment; and
>
> (ii) the offence is to be tried before a District Court or a Magistrate's Court; or
>
> (*c*) release on bail an accused who has been arrested or taken into custody under a warrant mentioned in subsection (1)(*c*), if the conditions prescribed in the Criminal Procedure Rules for such release are satisfied.
>
> (3) In this section, "accused" includes a "fugitive" as defined in the Extradition Act 1968.

16 Section 95(1)(*c*) of the CPC sets out the default position in respect of such persons, which is that they "must not be released on bail or on personal bond". It should be noted that the position of a fugitive apprehended under the Extradition Act is distinct from that of a person charged with a non-bailable offence under s 93 of the CPC; s 93(1) provides that such an accused person may nonetheless be released on bail. This is an important point to emphasise because the Applicant's written submissions at times appeared to equate his situation with that of a person charged with a non-bailable offence, but this is not what s 95(1)(*c*) of the CPC states. Instead, the position on bail that applies to a fugitive apprehended under the Extradition Act is equated with that of a

person accused of committing an offence punishable with death or imprisonment for life, as is provided under s 95(1)(*a*) of the CPC, or of committing a non-bailable offence *and* where the court believes that the accused person, if released, will not surrender to custody, be available for investigations or attend court, as is provided under s 95(1)(*b*). This point is a significant one that bears on the exercise of statutory interpretation that I undertake below. In my judgment, having regard to the plain language and structure of s 95(1) of the CPC, the same principles apply to the situations set out in s 95(1)(*a*) and s 95(1)(*b*) of the CPC as to extradition cases under s 95(1)(*c*). As I pointed out to both counsel (who agreed with me), this suggested that there was a heightened interest in keeping accused persons falling within these provisions in custody. And, in turn, it seemed to me that this weighed against an expansive view being taken of the exceptions to the default rule. It is to these exceptions that I now turn.

17 Section 95(2)(*c*) provides that an accused person falling within the ambit of s 95(1)(*c*) – meaning a fugitive apprehended under the Extradition Act – may nonetheless be released on bail if the conditions prescribed in the CPR are satisfied. In this regard, r 6(1) of the CPR provides:

> **Prescribed conditions for release**
>
> **6.**—(1) For the purposes of section 95(2)(*c*) of the Code, an accused, who has been arrested or taken into custody under a warrant issued under section 10, 24 or 34 of the Extradition Act (Cap. 103) or endorsed under section 33 of that Act, may be released on bail if any of the following is satisfied:
>
> (*a*) the accused is a juvenile;
>
> (*b*) the accused is sick or infirm;
>
> (*c*) the foreign jurisdiction, which makes the requisition for the surrender of the accused, provides an undertaking that the foreign jurisdiction does not oppose the granting of bail to the accused on the conditions imposed under

> section 94 of the Code, and either or both of the following apply:
>
> (i) the accused would have been granted bail under the law of that foreign jurisdiction, if the accused had been apprehended in that foreign jurisdiction for the offence to which that requisition relates;
>
> (ii) the act or omission constituting the offence to which that requisition relates would, if it took place in or within Singapore, constitute a bailable offence.
>
> …

18 Rule 6(1) of the CPR therefore provides for three situations in which a fugitive apprehended under the Extradition Act may be released on bail. Materially, this includes situations where the fugitive is a juvenile, or the fugitive is sick or infirm under r 6(1)(*a*) and r 6(1)(*b*) respectively.

19 It is therefore clear that where a fugitive apprehended under the Extradition Act applies to be released on bail, the starting point is that the fugitive is *not* to be released on bail. The following two-step framework assists the court to determine whether it should nonetheless extend bail to the fugitive:

(a) First, the court should consider whether the fugitive falls within the letter of any of the exceptions set out in r 6(1) of the CPR. Only if one or more exceptions are applicable should the court turn to the second step of the framework.

(b) Second, even if the fugitive falls within an exception, the court retains a residual discretion to determine whether bail should be granted after balancing all the relevant considerations. I will elaborate on how this should be approached in the context of the

"sick or infirm" exception later in this judgment (see [60] below).

20 At this point, I make two preliminary observations on these provisions. First, there is a seeming minor discrepancy between s 95(1)(*c*) of the CPC and r 6(1) of the CPR in that the latter refers to an outdated version of the Extradition Act. Second, a question may be raised as to whether the exceptions to the default position in s 95(1)(*c*) are limited only to those set out in the CPR or whether they also include s 95(2)(*a*) of the CPC.

Two preliminary observations on the interplay between s 95 of the CPC and r 6 of the CPR

(1) The seeming minor discrepancy between s 95(1)(*c*) of the CPC and r 6(1) of the CPR

21 There is a seeming minor discrepancy between s 95(1)(*c*) of the CPC and r 6(1) of the CPR. Rule 6(1) of the CPR refers to an accused person who has been arrested or taken into custody under "a warrant issued under section 10, 24 or 34 of the Extradition Act (Cap. 103) or endorsed under section 33 of that Act". Section 12 of the Extradition Act, which is referred to in s 95(1)(*c*) of the CPC, is not mentioned in r 6 of the CPR. This omission, however, was in my view the result of r 6 of the CPR referring to an outdated version of the Extradition Act. Section 10 of the Extradition Act (Cap 103, 2000 Rev Ed) ("Extradition Act 2000") deals with the issue of warrants for the purpose of extradition to foreign states. Pursuant to s 6 of the Extradition (Amendment) Act 2022 (Act 17 of 2022) ("Extradition (Amendment) Act 2022"), s 10 of the Extradition Act 2000 was repealed and re-enacted as s 12 of the Extradition Act.

22 Ultimately, nothing turned on the outdated reference to the Extradition Act 2000 in r 6 of the CPR, especially since s 15(2) of the Interpretation Act

1965 (2020 Rev Ed) ("Interpretation Act") provides that references in written law to a provision that is repealed and re-enacted are to be construed as references to the provision so re-enacted. Further, it was common ground between the parties that r 6(1) of the CPR was the relevant provision when considering the exceptions to the default position in respect of the grant of bail to a fugitive apprehended under the Extradition Act. Nevertheless, it may be appropriate for the Executive to update r 6(1) of the CPR to reflect the version of the Extradition Act which is currently in force.

(2) There is a question as to whether the exceptions to the default position set out in s 95(1)(*c*) of the CPC are limited to those set out in s 95(2)(*c*) of the CPC (and accordingly, r 6 of the CPR)

23 Since r 6(1) of the CPR, as it now stands, reproduces two of the grounds set out in s 95(2)(*a*) of the CPC, a question may arise as to whether the exceptions to the default position in s 95(1)(*c*) of the CPC are limited to those set out in the CPR. One view is that s 95(2)(*a*) of the CPC provides an additional exception to the default position set out in s 95(1)(*c*). In *Fatimah bte Kumin Lim v Attorney-General* [2014] 1 SLR 547 ("*Fatimah*"), the High Court took the view that s 95(2)(*a*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC 2012") – which is in similar terms as s 95(2)(*a*) of the CPC – applied to s 95(1)(*c*). Section 95(2)(*a*) of the CPC 2012 referred to "any juvenile or any sick or infirm person accused of such an *offence*" [emphasis added]. The High Court reasoned that the word "offence" in s 95(2)(*a*) of the CPC 2012 could be construed as applying also to the situations covered in s 95(1)(*b*) and s 95(1)(*c*) of the CPC 2012, despite these latter provisions at that time omitting any reference to an "offence". The High Court further reasoned that in the context of s 95(1)(*c*), the reference to "offence" in s 95(2)(*a*) should be understood as referring to an extraditable offence pursuant to which a warrant of apprehension had been issued under the Extradition Act 2000 (at [104]–[105]). Similarly, in

Christanto Radius v Public Prosecutor [2012] 3 SLR 749 ("*Christanto*"), the High Court likewise took the view that s 95(2) of the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC 2010") – which was identical to s 95(2) of the CPC 2012 – provided an exception to the general prohibition against the grant of bail in extradition proceedings (at [23]). The contrasting view is that Parliament has specifically curated an exception for cases covered by the Extradition Act in s 95(2)(*c*) of the CPC (and consequently, r 6 of the CPR) to the general interdiction against the grant of bail in such cases, and that provision alone should apply in that context to the exclusion of all other provisions including s 95(2)(*a*).

24 It was unnecessary for me to come to a landing on this issue because it was common ground that the effect of rr 6(1)(*a*) and 6(1)(*b*) of the CPR, as they now stand, is identical to s 95(2)(*a*) of the CPC. Nonetheless, I see some force in the view that the exceptions to the default position in s 95(1)(*c*) of the CPC are limited to those found in r 6(1) of the CPR. Significantly, the word "offence" does not appear in s 95(1)(*c*) of the CPC. The reasoning in *Fatimah* that the word "offence" could refer to an extraditable offence in so far as s 95(1)(*c*) of the CPC 2012 was concerned may, with respect, have overlooked s 2(1) of the CPC 2012, which defines an offence as an act or omission punishable by any written law. "Written law", in turn, refers to the Constitution, Acts, Ordinances and subsidiary legislation having force in Singapore (see s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed)). On this basis, the word "offence" in the CPC 2012 would not refer to an offence committed under the laws of another country. It appeared to me that these difficulties were what prompted Parliament, through s 20(*c*) of the Criminal Justice Reform Act 2018 (Act 19 of 2018) ("Criminal Justice Reform Act 2018"), to amend s 95(2) to include s 95(2)(*c*) (and through that, a reference to the CPR). Further, if s 95(2)(*a*) of

the CPC was indeed meant to apply to s 95(1)(*c*), this would render much of r 6(1) of the CPR superfluous. It therefore appeared to me that s 95(2)(*c*) of the CPC and r 6(1) of the CPR might be the only applicable provisions stipulating exceptions to the default position in s 95(1)(*c*). Nonetheless, as it was not necessary for me to resolve this issue in the present case, I shall say no more.

Until the amendments effected by the Criminal Justice Reform Act 2018 and the Extradition (Amendment) Act 2022, there was uncertainty as to the interplay between ss 95 and 97 of the CPC, and whether s 97 applied to extradition proceedings

25 Turning to s 97 of the CPC, while it is now clear that the power of the High Court to grant bail is circumscribed by s 95 of the CPC, this was not always the case. Prior to the amendment of the CPC in 2018 by way of the Criminal Justice Reform Act 2018, s 97 of the CPC 2012 was silent on the interplay between the prohibition of bail in the circumstances provided for in s 95 and the power of the High Court to grant bail in s 97. Section 97(1) of the CPC 2012 read as follows:

> **High Court's powers to grant or vary bail**
>
> **97.**—(1) Whether there is an appeal against conviction or not, the High Court may grant bail to any accused before it, release him on personal bond or vary the amount or conditions of the bail or personal bond required by a police officer or a State Court, and impose such other conditions for the bail or personal bond as it thinks fit.
>
> **…**

26 Due to this ambiguity, it was unclear whether the general power of the High Court to grant bail under s 97 of the CPC 2012 was subject to the limitations or exclusions prescribed by s 95. Our case law adopted divergent approaches to this question. On the one hand, in *S Selvamsylvester v Public Prosecutor* [2005] 4 SLR(R) 409 ("*Selvam*") and *Fatimah*, it was held that the

High Court's power to grant bail was fettered by the limitations in s 95 of the CPC 2012, or its earlier equivalent. A key reason underlying this view was that s 95 of the CPC 2012 and its predecessor provisions all referred to a "court", whether implicitly or explicitly, which encompassed both the Subordinate Courts (now the State Courts) and the High Court (*Selvam* at [8]; *Fatimah* at [41]–[42], [58], [64]–[65] and [77]–[84]). Further, s 95(1)(*c*) would be rendered otiose and ineffective if it did not apply to the High Court, because any fugitive subject to extradition proceedings would simply apply to the High Court for bail so as to circumvent that provision (*Selvam* at [9]; *Fatimah* at [145]).

27 In contrast, in *Mohamed Hisham bin Sapandi v Public Prosecutor* [2011] 4 SLR 868 ("*Hisham*") and *Christanto*, the court held that the High Court's powers in s 97 of the CPC 2010 – which was in materially the same terms as s 97 of the CPC 2012 – were not restricted by s 95 of the CPC 2010. This position was grounded in, among other things, the argument that interpreting s 97 as subject to s 95 would render the High Court's power under s 97 nugatory, because s 93(1) of the CPC 2010 already provided that the court had the power to grant bail to any person accused of a non-bailable offence save where provided in s 95(1) (*Hisham* at [9]; *Christanto* at [7]).

28 Both *Christanto* and *Fatimah* specifically concerned extradition proceedings. This presented an added layer of complexity, because it was unclear whether s 97 even applied to extradition proceedings. The uncertainty stemmed from the fact that s 95(3) specifically defines an "accused" in s 95 to include a "fugitive" within the meaning of the Extradition Act (the "Definition"), while s 97 does not contain a definition to this effect. It is therefore apt to consider *Christanto* and *Fatimah* more closely.

(1) The position in *Christanto* that s 97 of the CPC applied to extradition proceedings

29 *Christanto* concerned an applicant whose extradition was sought by the Australian authorities for an alleged conspiracy to bribe a foreign public official. A district judge denied his application for bail. He then filed a Criminal Motion pursuant to s 97 of the CPC 2010 to petition the High Court for bail. The court held that while a magistrate could not grant bail in extradition proceedings by reason of s 95(1)(*c*) of the CPC 2010, the High Court was vested with this power as well as the power to review the Subordinate Court's decision to refuse to grant bail, either by virtue of s 97 or its inherent jurisdiction (at [4]–[6] and [17]). The court explained that s 97(1) applied to extradition proceedings, notwithstanding the omission of the Definition from s 97, for the following reasons:

(a) Given that the Extradition Act 2000 made no provision on this, s 97 applied as it was a general provision intended to give the High Court discretionary power to grant bail where an individual was arrested (at [8]).

(b) Excluding extradition proceedings from s 97 would mean that fugitives apprehended under the Extradition Act 2000 could not apply for bail until their committal hearing, which did not have to be convened within a specific period after apprehension. This was contrary to the presumption of innocence (at [9]).

(c) The court relied on *Hempel and another v Moore* (1987) 70 ALR 714 ("*Hempel*"), where the General Division of the Federal Court of Australia held that the reference to "convicted persons" in the Federal Court of Australia Act 1976 (Cth) included persons subject to

extradition proceedings, as such proceedings could be characterised as criminal proceedings and the court was willing to overlook the technical significance of the term "conviction". Applying this line of reasoning, the court in *Christanto* reasoned that the term "fugitive" should be understood as a subset of "any accused" under s 97 of the CPC 2010 since extradition proceedings were a form of criminal proceedings (at [10]).

(d) Interpreting s 97 of the CPC 2010 to exclude extradition proceedings would give rise to the curious result that the High Court, while empowered to grant bail under s 418(*a*) of the CPC 2010 to a person subject to a warrant of committal pending review of his detention, would not have the power to grant bail to an apprehended person pending his committal hearing (at [11]).

30 Considering the totality of the evidence, including the applicant's substantial family ties to Singapore, the issue of any flight risk posed being sufficiently addressed by the bail conditions imposed and the applicant's medical conditions, the court granted the applicant bail. In respect of this final factor, the court found it doubtful that the applicant's medical conditions would have sufficed for the purpose of s 95(2) of the CPC 2010, but stated that it was a factor considered in the exercise of its discretion under s 97 (at [24]). In so far as s 95(2) was concerned, the court opined that the applicant would have to show that the conditions of remand would significantly exacerbate his or her illness and that this could not be remedied by changing the conditions of remand (for example by remanding him or her in a medical institute) (at [23]).

(2) The position in *Fatimah* that s 97 of the CPC did not apply to extradition proceedings

31 Turning to *Fatimah*, the applicant there was the subject of an extradition request from the United Kingdom on account of alleged theft offences. She made an application to the High Court for bail under s 97(1) of the CPC 2012. The court considered the reasoning in *Christanto* and ultimately arrived at the opposite conclusion that s 97(1) did not apply to extradition proceedings (at [157]). I summarise the court's main reasons for this position below:

(a) The court did not consider *Hempel* to be helpful in demonstrating that "fugitives" should be read as a subset of accused persons, because the statutory provisions in Singapore were different (at [109]). While extradition proceedings might be a form of criminal proceedings, this did not necessarily mean that s 97(1) applied to extradition proceedings. The court considered the absence of the Definition from s 97 to be a "significant factor" militating against the conclusion that s 97(1) applied to extradition proceedings (at [110]).

(b) It was not true that the Extradition Act 2000 was silent on the grant of bail because it provided that a magistrate may remand a person on bail. In any event, s 95(1)(*c*) of the CPC 2010 expressly precluded the grant of bail in extradition proceedings (at [111]).

(c) The argument that extraditable persons would be denied bail at the earliest opportunity if s 97 excluded fugitives assumed, erroneously, that s 97(1) was not circumscribed by s 95(1) (at [112]).

(d) The court disagreed that the power of the High Court to grant bail under s 418(*a*) of the CPC 2010 was restricted to when a warrant of

committal had been issued, since the provision stated that the High Court may grant bail "whenever it thinks fit" (at [140]).

32 On the facts of *Fatimah*, the court held that even assuming that the High Court had the power to grant bail in extradition proceedings under s 97(1) of the CPC 2012, unfettered by the prohibition in s 95(1)(*c*), or under its inherent jurisdiction, bail should only be granted if there was special reason to do so. Section 95(1)(*c*) would otherwise be rendered otiose. Since the applicant accepted that she had no special reason, her application was dismissed (at [168]).

*Parliament's subsequent amendments have settled that the High Court's power to grant bail to a fugitive apprehended under the Extradition Act is found in s 97(1)(*a*) and circumscribed by s 95 of the CPC*

33 The interplay between ss 95 and 97 of the CPC has since been definitively settled by Parliament's insertion of the phrase "[s]ubject to section 95(1) and subsection (2)" in s 97(1), pursuant to s 21 of the Criminal Justice Reform Act 2018. It is now clear that the High Court's powers under s 97(1) of the CPC are circumscribed by s 95(1). The point is that the High Court cannot exercise its power to grant bail independently of s 95.

34 In addition, with the enactment of s 14 of the Extradition Act pursuant to the Extradition (Amendment) Act 2022, the absence of the Definition from s 97 of the CPC – which the court in *Fatimah* considered to be a "significant factor" – no longer stands in the way of interpreting s 97 to extend to extradition proceedings. Section 14 of the Extradition Act provides that "Division 5 (Bails and bonds) of Part 6 of the [CPC] applies to an application made under this Act for bail" with certain stipulated modifications, including that "a reference to an accused is a reference to the fugitive". Section 97 of the CPC is located within

Division 5 of Part 6. This suggested to me that s 97 of the CPC applies to extradition proceedings.

35 Drawing these threads together, s 97(1)(*a*) of the CPC empowers the High Court to grant bail to any accused person before it. This power is subject to s 95 of the CPC. Section 95(1) provides that for certain categories of persons, including fugitives apprehended under the Extradition Act, the default position is that they must not be released on bail. Section 95(2) carves out exceptions to this default position. Where extradition proceedings are concerned, s 95(2)(*c*) points to the CPR for the conditions that must be satisfied for the grant of bail. In this regard, the applicable provision is r 6(1) of the CPR, and it is to this provision that I now turn.

*The Applicant did not fall within the ambit of "sick or infirm" under r 6(1)(*b*) of the CPR*

36 At the outset, I observe that when the Applicant applied to be released on bail, the burden of proof was on him to show that he could bring himself within one or more of the exceptions found in r 6(1) of the CPR. Where bail is not available to an accused person as a matter of right but only as a matter of the court's discretion, and even more so where the ability to seek bail is an exception to the general rule that bail is not available, the onus is on the accused person to show that bail should be extended to him (see *Public Prosecutor v Yang Yin* [2015] 2 SLR 78 ("*Yang Yin*") at [29]). In the present case, and following *Yang Yin*, the Applicant bore the burden of proving that he came within an exception in r 6(1) of the CPR. As the Applicant relied solely on the "sick or infirm" exception under r 6(1)(*b*) of the CPR, a central issue that arose for determination was the appropriate test for ascertaining whether a person is "sick or infirm", within the meaning of that provision.

The words "sick or infirm" should be construed as encompassing the exceptional situation of a sickness or infirmity that cannot reasonably be managed by the SPS safely

37 The key issue that arose in the present case was how the words "sick or infirm" in r 6(1)(*b*) of the CPR are to be interpreted. To recapitulate, r 6(1)(*b*) provides that a fugitive apprehended under the Extradition Act may nevertheless be released on bail if he is "sick or infirm". My attention was not drawn to any local decision interpreting those words in r 6(1)(*b*) of the CPR. As set out earlier (see [9]–[10] above), three interpretations of the words "sick or infirm" were eventually advanced by the parties. The first interpretation, which was put forward by the Applicant, was that these words refer to a fugitive who is suffering from *any* sickness or infirmity. A second interpretation, which was put forward by the State, was that they refer to a sickness or infirmity that cannot reasonably be managed by the SPS safely. The third, which was put forward by Mr Wijaya in his oral submissions, was that "sick or infirm" may refer to situations of pre-existing ailments that are not of a trivial nature. Since there were at least three interpretations of the words "sick or infirm" proffered, it was necessary to apply a purposive interpretation in respect of these words, as is statutorily mandated by s 9A of the Interpretation Act and as has been explained in detail in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*").

38 First, the court should ascertain the possible interpretations of the provision in question, considering not only the text of the provision but further, the context of the provision within the written law as a whole (*Tan Cheng Bock* at [37]). In ascertaining the possible interpretations of a provision, the court may be guided by the various rules and canons of statutory interpretation. One of these rules which I considered relevant was that Parliament is presumed not to have intended a result that is unworkable or impracticable (*Tan Cheng Bock* at

[38]). Consequently, an interpretation that leads to an unworkable or impracticable result is to be eschewed. In the present case, I considered that if the words "sick or infirm" were construed to refer to *any* sickness or infirmity, this would lead to unworkable or impracticable results. It would have enabled fugitives apprehended under the Extradition Act to rely on even the slightest illness or weakness to seek bail. This struck me as implausible since there was no logical basis for such a view. It was also impractical and perhaps even unworkable if a fugitive were to be released on bail on account of some minor illness, only to have that revoked a few days later after recovering from it. Indeed, I noted that in the proceedings before the DJ, counsel for the Applicant, Mr Bachoo Mohan Singh, conceded that a mere cough or cold would not fall within the ambit of "sick or infirm" in r 6(1)(*b*) of the CPR. And before me, Mr Wijaya very fairly accepted that there were difficulties with adopting such a broad interpretation of the words "sick or infirm", which in any case I regarded as untenable.

39 Turning to Mr Wijaya's alternative interpretation (which was that the words "sick or infirm" refer to situations of pre-existing ailments that are not trivial), it was telling that Mr Wijaya could not identify or explain what other criteria would need to be met in order to come within the exception in r 6(1)(*b*) of the CPR. Indeed, Mr Wijaya's interpretation with its emphasis on "pre-existing ailments" excluded individuals who were only diagnosed with serious medical conditions in prison. It was unworkable and plainly unsatisfactory that such individuals would not be considered to be "sick or infirm", even if the SPS could not manage their medical conditions. Mr Wijaya's alternative interpretation was therefore implausible.

40 This left the State's interpretation (which was that the words "sick or infirm" refer to a sickness or infirmity that cannot reasonably be managed by

the SPS safely). If one starts with the default position that a fugitive apprehended under the Extradition Act is not entitled to bail but must be held in the custody of the SPS, and if one recognises that the SPS has in place medical services to attend to illnesses or infirmities, then it must follow as a matter of logic that the correct – and, in my view, the only viable – interpretation was to construe the words "sick or infirm" as referring to the exceptional situation of a sickness or infirmity that cannot reasonably be managed by the SPS safely.

41 The State's interpretation, in my view, was attractive because it avoided the difficulties of unequal treatment of persons in custody. It would be unfair if a prisoner who was able to obtain private medical treatment was entitled to be released on bail, as this might place prisoners with more limited financial means at a disadvantage. By pegging the determination of whether a fugitive is "sick or infirm" to the question of whether the SPS is able to reasonably manage his or her illness or infirmity safely, the inquiry would be an objective one. The test would avoid subjective assessments of the relative gravity of illnesses and infirmities when there would generally be no sensible standards for doing so. The test would also avoid having to manage the diverse personal preferences of persons in custody. In sum, by setting a *uniform* standard for determining if a fugitive is "sick or infirm", the court would be able to treat fugitives applying for bail fairly and equally.

42 I noted that the State's interpretation was in line with my own decision in *Feroz* (which I have referred to earlier at [12] above). There, the accused person in question faced a total of 61 charges, which included at least one non-bailable offence. He also suffered from, amongst other medical ailments, epileptic seizures. One of the issues before me was whether he was "sick or infirm" under s 95(2)(*a*) of the CPC, so as to be granted bail even though bail was not available as a matter of right under s 95(1)(*b*) of the CPC because there

was a high risk that if released, he would not surrender to custody, be available for investigations or attend court (at [26]). In concluding that he was not "sick or infirm" under s 95(2)(*a*), I construed the words "sick or infirm" in s 95(2)(*a*) – which is found in identical terms in r 6(1)(*b*) of the CPR – to refer to a medical condition that the SPS could not manage with a reasonable degree of safety (at [31]). On the facts before me, I was satisfied that the District Judge in that case had not erred in refusing to grant bail to the offender because the SPS could detect the onset of any seizures, respond promptly, and more generally, could manage his medical condition (at [42]). In my judgment, "sick or infirm" in s 95(2)(*a*) of the CPC bears essentially the same meaning as "sick or infirm" in r 6(1)(*b*) of the CPR and means any sickness or infirmity that cannot reasonably be managed by the SPS safely.

43 The parties also drew my attention to certain Indian and Malaysian cases. Beginning with the Indian cases, these were not all consistent. In *Khagendra Nath Bayan and another v The State of Assam* 1982 Cri LJ 2109 ("*Khagendra*"), K N Saikia J construed the word "infirm" in "sick or infirm" in s 437 of the Code of Criminal Procedure, 1973 (India) ("Indian CPC") literally, by adopting its dictionary definitions. On the facts, Saikia J also concluded that one of the accused persons in question was sick because his illness was supported by a medical certificate, suggesting a literal interpretation of the word "sick" as well (at [12]). In contrast, in *Sangappa v State of Karnataka* (1978) Cr LJ 1367 (Kar) ("*Sangappa*"), N R Kudoor J held that not every sickness or infirmity would entitle an accused person to be released on bail under s 437 of the Indian CPC. Instead, the court would consider, amongst other things, the nature and seriousness of the sickness or infirmity, the suitability or otherwise of the remand to prison, and the availability of the necessary medical treatment and reasonable amenities there (at [21]). Finally, in *Sameer Mahandru v*

Directorate of Enforcement (12 June 2023, High Court of New Delhi) (India) ("*Sameer*"), Chandra Dhari Singh J interpreted the words "sick or infirm" in s 45(1) of the Prevention of Money Laundering Act 2002 (India) ("PMLA") to refer to a sickness or infirmity that is so grave that it is life threatening and cannot be treated by the jail hospitals (at [37]).

44 In my view, the Indian cases concerning bail applications under the Indian CPC were not directly relevant. Further, as I have noted, they were not consistent in their approaches. In cases concerning bail applications under the Indian CPC, the courts had approached the issue from the starting point that they had an unfettered discretion under s 439 of the Indian CPC to grant bail (*Khagendra* at [5]; *Sangappa* at [12]). This is materially different from the position in Singapore in relation to the grant of bail to fugitives under the Extradition Act, which is limited to the specific situations prescribed in r 6(1) of the CPR. In contrast, s 45(1) of the PMLA was similar to s 95 of the CPC because it provided, amongst other things, for an exception to the general interdiction against the grant of bail if the accused person in question was sick or infirm. Thus, a closer analogy could be drawn between *Sameer* and the present case, and notably, Singh J in *Sameer* had adopted a broadly similar approach to the one I took in *Feroz*, in that the accused person must be able to show that the prison service is unable to treat his medical conditions adequately.

45 Turning to the Malaysian cases, in *Public Prosecutor v Dato Balwant Singh (No 1)* [2002] 4 MLJ 427 ("*Balwant Singh*") and *Jimmy Seah Thian Heng & Ors v Public Prosecutor* [2019] 7 MLJ 308 ("*Jimmy Seah*"), the courts followed the interpretation of "sick or infirm" in *Khagendra* (*Balwant Singh* at 435–437; *Jimmy Seah* at [100]–[101]). It appeared to me, however, that the courts in *Balwant Singh* and *Jimmy Seah* may not have appreciated that the court in *Khagendra* was operating on the premise that it had an unfettered discretion

to grant bail. In contrast, *Balwant Singh* and *Jimmy Seah* both concerned provisions – specifically, s 388 of the Criminal Procedure Code (M'sia) in *Balwant Singh* and s 13 of the Security Offences (Special Measures) Act 2012 (No 747 of 2012) (M'sia) ("SOSMA") in *Jimmy Seah* – that set out general prohibitions against the grant of bail to persons who fell within the scope of these provisions, unless certain stipulated exceptions were satisfied. It seemed to me that *Balwant Singh* and *Jimmy Seah* were not persuasive because the courts in those cases did not seem to have considered the nuances between the various provisions in issue.

46 Aside from this, I considered that the approach taken in *Khagendra* was untenable for the following reasons. First, as explained earlier (see [38] above), it meant that fugitives apprehended under the Extradition Act would be able to rely on even the slightest illness or infirmity to seek bail. Second, it appeared that the courts following *Khagendra* were determining, as a matter of *law*, whether the illness or infirmity was sufficiently grave to satisfy the requirement of "sick or infirm". Such an approach engendered arbitrariness and subjectiveness and had to be eschewed. Indeed, the case of *Jimmy Seah* illustrates this precise problem. There, five accused persons were charged for being members of an organised crime group, which was a security offence under the First Schedule to the SOSMA. Under s 13 of the SOSMA, bail could not be granted to a person who had been charged with a security offence unless the accused person was below 18 years of age, a woman, or a sick or infirm person. The accused persons argued that they should be granted bail because they were sick or infirm. Only one of the five accused persons, Mr Chua Kah Tat ("Mr Chua"), was denied bail on the basis that his complaints, which were related to his bones and joints, did not render him sick or infirm (at [110]–[111]). He allegedly suffered from, amongst other things, early osteoarthritis, a

fractured elbow, and multiple bone spurs to his backbone, all of which caused him pain and hindered his daily activities (at [104]–[108]). However, in respect of another accused person, Mr Ng Soon Kiat, it appeared that the court had taken into account his arthritis (at [89]). More importantly, while the court had construed the term "infirm" literally to mean "weak, not strong", it nonetheless denied bail to Mr Chua. It is unclear what metric the court applied to reach this conclusion. The inconsistency in outcomes and reasoning underscore how the absence of a clear objective standard risks decisions that are arbitrary and subjective in nature.

47 For these reasons, I much preferred the approach set out in *Feroz* and *Sameer*, in so far as these cases referenced the adequacy of the treatment that was available to the accused person in prison. It followed that the words "sick or infirm" under r 6(1)(*b*) of the CPR could only be construed as referring to the exceptional situation of a fugitive suffering from a sickness or infirmity that cannot reasonably be managed by the SPS safely. For completeness, I noted that this standard might be thought to be lower than that set out in *Christanto*, where the High Court held that the accused person would have to show that remand without bail would significantly exacerbate his or her medical illness (at [23]). If indeed *Christanto* sets an even higher standard, I did not consider that this was either warranted or appropriate; once it is shown that the SPS is not able to reasonably manage the accused person's medical condition safely, that would suffice to establish that the person is "sick or infirm" without having also to establish that the accused person's condition would or might likely deteriorate if he was kept in custody.

48 Assuming, however, that I was wrong in my conclusion that there was only one viable or plausible interpretation of the words "sick or infirm" in

r 6(1)(*b*) of the CPR, I turned to the next steps in the exercise of purposive interpretation, which in any case led me to the same conclusion.

49 At the second and third steps of the exercise of purposive interpretation, the court: (a) determines the legislative purpose or object of the provision in question and the part of the statute in which the provision is situated; and (b) prefers the interpretation of the provision which furthers the purpose of the written text (*Tan Cheng Bock* at [54(c)]). Sections 95(1)(*a*) and 95(1)(*b*) of the CPC set out general interdictions against the grant of bail to persons accused of an offence punishable with death or imprisonment for life, or of a non-bailable offence where the court believes that the accused person, if released, will not surrender to custody, be available for investigations or attend court. In my judgment, the common thread that ran through these situations, as with a person apprehended under the Extradition Act, was the need for enhanced measures to secure the attendance of the accused person before a court. This is a matter of plain importance in the case of persons charged with serious offences that are punishable with death or with life imprisonment; and with persons charged with a non-bailable offence who also demonstrate a sufficient likelihood of not being available when summoned. In the case of fugitives apprehended under the Extradition Act, there is a clear public interest in ensuring that the State's obligations under the relevant extradition treaty are not frustrated. Consistent with this, Parliament has confirmed that it is only in *special circumstances* that a fugitive apprehended under the Extradition Act would be granted bail (see Singapore Parl Debates; Vol 94, Sitting No 69; [19 March 2018] (Indranee Rajah, Senior Minister of State for Law)).

50 With this in mind, I noted that under r 6(1) of the CPR, there are three categories of cases where an exception to the default rule in s 95(1)(*c*) of the CPC may apply. The first two, juveniles (r 6(1)(*a*)) and sick or infirm persons

(r 6(1)(*b*)), refer to persons in need of care or some form of supervision. This supported the view that the key consideration undergirding r 6(1)(*b*) should be whether the SPS is able to provide adequate medical care. Of course, different considerations may apply to juveniles, who may need other forms of care and supervision, but that is not before me. As for the third category under r 6(1)(*c*), an essential condition is the consent of the foreign jurisdiction requesting the extradition. This lent support to my view that an important interest in these cases was for Singapore to meet her obligations under her extradition treaties. In my view, the interest of the State in complying with its extradition obligations was the best explanation for why these three situations were grouped together in this way as *exceptional* situations in which bail may be extended to a fugitive. On this basis, it would promote the objective of securing the attendance of a fugitive apprehended under the Extradition Act to construe the words "sick or infirm" in r 6(1)(*b*) of the CPR more narrowly and as encompassing the *exceptional* situation of a sickness or infirmity that cannot reasonably be managed by the SPS safely.

51 It followed that the DJ made no error of law in her judgment because this was precisely how she interpreted the words "sick or infirm". Indeed, she applied my decision in *Feroz* and she was correct to have done so.

The SPS could reasonably manage the Applicant's medical conditions safely

52 The DJ accepted the assertion by the SPS that it could adequately manage the Applicant's medical conditions, and I saw no reason to come to a different view. The Applicant suffered from the following medical ailments: coronary artery disease; diabetes mellitus; hyperlipidaemia; severe osteoarthritis of the right ankle; and chronic avulsion fracture in his right medial malleolus. The SPS, however, had ensured that the Applicant was prescribed

the relevant medications to manage his medical conditions. The SPS was also prepared to handle any medical emergencies and make the necessary arrangements should the Applicant require specialist medical care. For instance, on 2 May 2025, the Applicant was sent by the prison ambulance to the Emergency Department at Changi General Hospital after complaining of three episodes of non-exertional chest pain that day. There was thus no merit to the Applicant's assertion that there was a severe delay in access to specialist care that placed him at an increased risk of further complications such as a heart attack.

53 The Applicant also sought to persuade me that in considering the adequacy of the care afforded by the SPS, I had to consider the fact that the Applicant applied for – but was unsuccessful in seeking – the assistance of his private physician to assess his condition and to respond to the State's assertion of the adequacy of the care facilities that had been provided. On this, I accepted the submission of counsel for the State, Deputy Solicitor-General Vincent Leow, who observed that the Applicant's medical conditions were pre-existing conditions that manifested a degree of stability. There was no suggestion of some new important medical development, and it was open to the Applicant's private physicians to consider and opine on the adequacy of the care that had been extended to the Applicant. Nothing, however, was forthcoming in this respect. In the circumstances, there was nothing to show that the SPS could not reasonably manage the Applicant's medical conditions safely.

54 Nor was there anything else to suggest that the Applicant suffered from any specific infirmity that could not reasonably be handled by the SPS safely. In this regard, I noted that the Applicant was housed at the lower level of his correctional unit such that he did not have to use the stairs to reach his cell. Moreover, the Applicant had been offered the use of a commode in the cell

instead of a squatting toilet on account of his age. Nonetheless, the Applicant declined the offer, stating that he was able to manage using the squatting toilets. In all the circumstances, I found that the Applicant had failed to establish that the SPS could not reasonably manage his alleged infirmities safely.

55 I therefore affirmed the DJ's conclusion that the Applicant was not "sick or infirm" within the meaning of r 6(1)(*b*) of the CPR.

Even if the Applicant was "sick or infirm" within the meaning of r 6(1)(b) of the CPR, the DJ did not err in refusing to grant bail to the Applicant

56 For completeness, even assuming that the Applicant was "sick or infirm" within the meaning of r 6(1)(*b*) of the CPR, I considered whether the DJ erred in refusing to grant bail to the Applicant. The discretion of the court in this regard is provided for in both s 95(2)(*c*) of the CPC and r 6(1)(*b*) of the CPR, which state that the court "may" grant bail where one or more of the exceptions under r 6(1) of the CPR have been satisfied. The second limb of the test set out at [19] above pertains to the exercise of this discretion.

57 In *Yang Yin*, a criminal case that involved an accused person charged with the falsification of accounts, I outlined the following non-exhaustive factors that the court may consider when determining whether to grant bail (at [44]):

(a) whether there are reasonable grounds for believing the accused person is guilty of the offence;

(b) the nature and gravity of the offence charged;

(c) the severity and degree of punishment that might follow;

(d) the danger of the accused person absconding if released on bail;

(e) the accused person's character, means and standing;

(f) the danger of the offence being continued or repeated;

(g) the danger of witnesses being tampered with;

(h) whether the grant of bail is essential to ensure that the accused person has an adequate opportunity to prepare his defence; and

(i) the length of the period of detention of the accused person and the probability of any further period of delay.

58 The factors that typically apply to domestic criminal cases may not fully apply in the context of extradition proceedings. This was also observed by the High Court of Australia in *United Mexican States v Cabal* (2001) 209 CLR 165 ("*Cabal*"), which noted that extradition cases implicated Australia's international relations and standing, and the court accordingly had to consider the purpose and policy of the Extradition Act 1988 (Cth) (at [45]). Similarly, in *Vasiljkovic v Commonwealth of Australia* (2006) 227 CLR 614, Gummow and Hayne JJ discussed s 15 of the Extradition Act 1988 (Cth), which provided that a person arrested under a provisional warrant and brought before a magistrate shall be released on bail only if there are "special circumstances" that justify this. They observed that "historical ideas about bail" were "not controlling" as extradition proceedings had a dimension of international comity: they engaged the requested state's international relations and standing, the consideration of effective reciprocity, and the consequences for those relations of supervening flight by persons whose extraditions were sought (at [60]).

59 In my judgment, the linchpin in the court's determination of whether to extend bail in extradition cases is the State's ability to fulfil its international obligations by surrendering the fugitive to the extraditing State. Parliament has

explained, in the context of discussing the Extradition (Amendment) Bill (Bill No 10/2022), that the consideration to be balanced against individual liberty is international cooperation, which would be advanced by empowering the authorities to facilitate justified extradition requests (see Singapore Parl Debates; Vol 95, Sitting No 60; [4 April 2022] (Edwin Tong Chun Fai, Second Minister for Law)). In *In the Matter of the Extradition of Kamel Nacif-Borge, Extraditee, and a Fugitive from the United Mexican States* 829 F Supp 1210 (D Nev, 1993) ("*Nacif-Borge*"), the Nevada District Court stated that "[t]he primary concern in an international extradition matter is to deliver the extraditee to the requesting nation" (at 1213). In line with this concern, the Nevada District Court held that where the court is satisfied that there is a special circumstance in favour of extending bail, the court "must then assess flight risk" and "will not grant bail if the person is a risk of flight" (at 1221). Similarly, in *Cabal*, the High Court of Australia recognised that once it has been determined that special circumstances justifying bail exist, the risk of flight is the chief factor in the court's exercise of its general discretion (at [57] and [74]). Thus, in setting out the conditions for the grant of bail in extradition cases, the High Court of Australia specified that there had to be "no real risk of flight" (at [61]).

60 In my judgment, it follows that notwithstanding the high threshold a fugitive must cross to demonstrate that he is "sick or infirm" within the meaning of r 6(1)(*b*) of the CPR, bail will ordinarily only be granted to a "sick or infirm" fugitive prior to the committal hearing if *the fugitive does not pose a real risk of flight*. This ultimately calls for a balancing exercise of all the relevant considerations, including the nature of the illness, the imminence and likelihood of serious harm to the fugitive owing to the inability of the SPS to safely mange the illness, and the possibility of medical treatment being made available subject to measures being put in place to prevent the risk of flight materialising.

61 In the present case, even if the Applicant was "sick or infirm" within the meaning of r 6(1)(*b*) of the CPR, which I held he was not, the DJ did not err in refusing to grant bail to the Applicant because she correctly concluded that he posed a real flight risk. The Applicant held multiple passports from the Republic of Guinea-Bissau ("Guinea-Bissau") and the Republic of Vanuatu ("Vanuatu"). On the Applicant's own account, these passports were acquired for the purpose of facilitating travel, and it was clear from his travel records that he had indeed used them for this purpose. In 2024, the Applicant took five trips, four of which were for a period of two weeks or more. The Applicant was not a citizen of Singapore, and both his children resided abroad in Hong Kong and the United States of America respectively.

62 Further, the Applicant's passports included a diplomatic passport issued by Guinea-Bissau under the name "Joao Paolo Gomes". I found the inconsistent accounts furnished by the Applicant as to how he came to procure this diplomatic passport to be troubling. According to the Applicant's affidavit filed in his bail application below, the Guinea-Bissau consulate in the People's Republic of China ("China") issued him the diplomatic passport because a page of his other Guinea-Bissau passport was torn. The name "Joao Paolo Gomes" was supposedly used because the Guinea-Bissau authorities required all passports to be issued under Portuguese names. In contrast, in the Applicant's affidavit filed in CM 41, he asserted that he had been deported from China due to the torn page and entered Singapore with his Vanuatu passport. He claimed to have acquired the diplomatic passport separately, following discussions with the Guinea-Bissau authorities over the possibility of becoming Guinea-Bissau's representative in Singapore and Malaysia. The name "Joao Paolo Gomes" was used based on a suggestion (rather than the requirement) of the Guinea-Bissau authorities. No explanation was advanced for these inconsistent accounts. And

in any event, regardless of why there were these inconsistencies, it was clear that the Applicant had the means of obtaining a foreign passport and of travelling inconspicuously under a completely different identity, which escalated the risk of flight.

63 Finally, the nature of the underlying offence was also relevant in evaluating the Applicant's flight risk (*Nacif-Borge* at 1220). Here, the Applicant was accused of committing a serious corruption offence which carried a maximum penalty of life imprisonment.

64 In all the circumstances, there was a real risk that the Applicant might abscond if he was to be released on bail. There was, in my view, a real risk of flight in this case that could not adequately be managed. The DJ's view that bail should not be extended to the Applicant even if he was "sick or infirm" was entirely justified.

There was no basis for the assertion that the court should exercise its inherent power to nonetheless grant the Applicant bail

65 The Applicant submitted in the alternative that I should exercise my inherent powers under s 97 of the CPC to release him on bail. To be fair to Mr Wijaya, he did not raise this in his oral arguments, and this was for good reason. In my judgment, where the court has a clear and circumscribed statutory power, it would be inappropriate to infer a wide-ranging inherent power to do the very things that the statutory power did not extend to. The court's inherent power in such circumstances is one reserved for exceptional circumstances where for some reason it is not possible to invoke the statutory powers, but where it is necessary in the interests of justice for the court to intervene (see *Four Pillars Enterprises Co Ltd v Beiersdorf Aktiengesellschaft* [1999] 1 SLR(R) 382 at [27]; *Wellmix Organics (International) Pte Ltd v Lau Yu Man*

[2006] 2 SLR(R) 117 at [81]). This clearly was not the case here and nothing was advanced to suggest otherwise.

66 The Applicant had not, because of the denial of bail, been deprived of an adequate opportunity to prepare his defence. He was able to rely on his lawyers and family members to assist him, and they had been able to gain access to him for this purpose. The Applicant had also not been subject – and would not be subject – to any delay in his legal proceedings that would warrant the grant of bail.

Conclusion

67 For these reasons, I was amply satisfied that the DJ made no error in refusing to grant bail to the Applicant. Accordingly, I dismissed CM 41.

Sundaresh Menon
Chief Justice

Suang Wijaya and Hamza Zafar Malik (instructed) (Eugene Thuraisingam LLP), Yeo Lai Hock Nichol and Poh Chee Eng (Nine Yards Chambers LLC) for the applicant;
Vincent Leow, Sivakumar s/o Ramasamy, Sarah Siaw Ming Hui and Emily Zhao (Attorney-General's Chambers) for the respondent.