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

[2025] SGHC 253

Originating Application No 1213 of 2025

In the matter of Order 4, Rule 7 of the Rules of Court 2021

And

In the matter of Articles 9(1), 12(1) and 93 of the Constitution of the Republic of Singapore (2020 Rev Ed)

Between

(1) Howe Wen Khong Rocky
(2) Annamalai Kokila Parvathi
(3) Han Li Ying, Kirsten
(4) Leelavathy d/o Suppiah
(5) Wham Kok Han Jolovan
(6) Rockey Sharmila
(7) Nazira Lajim Hertslet

… *Applicants*

And

Attorney-General

… *Respondent*

JUDGMENT

[Constitutional Law — Fundamental liberties — Right to life and personal liberty]
[Constitutional Law — Fundamental liberties — Equality before the law]

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v
Attorney-General

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3 December 2025

16 December 2025 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 HC/OA 1213/2025 ("OA 1213") is an application brought by seven individuals (collectively the "Applicants"), who are members of an unincorporated body called the Transformative Justice Collective ("TJC").

2 Essentially, the Applicants seek declarations that the mandatory punishment of death contained within s 33(1) of the Misuse of Drugs Act 1973 (2020 Rev Ed) (the "MDA") read with the Second Schedule of the MDA (the "MDP") is unconstitutional for infringing Arts 9(1), 12(1) and 93 of the

Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution").[1] They also ask for the declarations to operate retrospectively.[2]

3 According to the Applicants, they have the requisite *locus standi, ie,* standing, to bring OA 1213,[3] and they argue that they have shown that the MDP is unconstitutional for infringing the various articles within the Constitution.[4]

4 In response, the Attorney-General (the "AG") contends that OA 1213 is entirely unmeritorious and should be dismissed.[5] The AG submits that the Applicants do not have any *locus standi* to commence OA 1213. In any event, the AG argues that the Applicants have failed to show that the MDP breaches Arts 9(1), 12(1) and 93 of the Constitution.[6]

5 Having considered the matter, I dismiss OA 1213. These are my reasons.

Background

6 Each of the Applicants is a member of the TJC, a non-governmental organisation which the Applicants describe as an "unincorporated association", with the "express purpose … to seek the abolition of the death penalty".[7] According to them, TJC, among other things, organises public education events

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1 Originating Application (Amendment No. 1) in HC/OA 1213/2025 ("OA 1213"), prayers 2(1) and 2(2).

2 Originating Application (Amendment No. 1) in OA 1213, prayer 2(3).

3 Joint Written Submissions of the Applicants dated 25 November 2025 ("AWS") at [2]–[8], [26]–[35].

4 AWS at [37].

5 Respondent's Written Submissions dated 25 November 2025 ("RWS") at [2].

6 RWS at [2].

7 Affidavit of Howe Wen Khong Rocky ("Mr Howe") dated 28 October 2025 filed in support of OA 1213 (the "Affidavit") at [5] and [6].

and protests on the use of the death penalty, and works directly with the families of death row prisoners to campaign for the halting of their executions.[8]

7 A brief introduction to each of the Applicants is set out below:

(a) Mr Howe Wen Khong Rocky ("Mr Howe"),[9] Ms Annamalai Kokila Parvathi ("Ms Kokila"),[10] Ms Han Li Ying Kirsten ("Ms Han")[11] and Mr Wham Kok Han Jolovan ("Mr Wham")[12] are part of the founding executive committee of the TJC. They have been involved in various campaigns concerning the death penalty and/or prisoners on death row.[13]

(b) Ms Leelavathy d/o Suppiah ("Ms Leelavathy") has been a member of the TJC since April 2023. She is the sister of Mr Tangaraju s/o Suppiah ("Mr Tangaraju"), who was convicted and sentenced to the mandatory punishment of death pursuant to s 33(1) of the MDA. Mr Tangaraju was executed on 26 April 2023.[14]

(c) Ms Rockey Sharmila ("Ms Sharmila") is also a member of the founding executive committee of the TJC. Ms Sharmila is the sister of Mr Syed Suhail bin Syed Zin ("Mr Syed Suhail"), who was convicted and sentenced to the mandatory punishment of death under s 33(1) of the MDA. Mr Syed Suhail was executed on 23 January 2025.[15]

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8 Affidavit at [14]–[23].

9 Affidavit at [24].

10 Affidavit at [34].

11 Affidavit at [39].

12 Affidavit at [51].

13 Affidavit at [24]–[31], [34]–[36], [39]–[42], [51]–[53].

14 Affidavit at [45]–[48].

15 Affidavit at [55]–[58].

(d) Ms Nazira Lajim Hertslet ("Ms Nazira") has been a member of the TJC since June 2022. She is the sister of Mr Nazeri bin Lajim ("Mr Nazeri"), who was convicted and sentenced to the mandatory punishment of death under s 33(1) of the MDA. Mr Nazeri was executed on 22 July 2022.[16]

8 When OA 1213 was filed on 28 October 2025, there were only four applicants, namely, Mr Howe, Ms Kokila, Ms Han and Ms Leelavathy. Subsequently, on 18 November 2025, Mr Wham, Ms Sharmilla and Ms Nazira were added as parties to the application. The supporting affidavit was made by Mr Howe and on behalf of the other Applicants,[17] and one set of written submissions was filed for the Applicants. At the hearing, Mr Howe submitted on behalf of the Applicants, with additional points made by Ms Han and Ms Sharmila.

Issues to be determined

9 Based on the parties' cases as sketched out in [2]–[4] above, and the arguments made at the hearing, there are two main issues to be determined:

(a) whether the Applicants have *locus standi* to commence OA 1213; and

(b) in any event, whether the MDP is inconsistent with each of Arts 9(1), 12(1) and 93 of the Constitution.

10 I will address each issue in turn.

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16 Affidavit at [62]–[65].

17 Affidavit at [1].

Whether the Applicants have *locus standi* to commence OA 1213

The applicable law

11 In constitutional challenges, an applicant must have *locus standi* to bring an action for declaratory relief.[18] The appropriate test for determining *locus standi* depends on "the nature of the rights at stake", namely, "whether it is a public or private right" (*Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1 ("*Vellama*") at [29]).

12 A private right is one which is held and vindicated by a private individual (*Vellama* at [28] citing *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") at [69]). The requirements to establish *locus standi* in an action for declaratory relief in constitutional challenges based on private rights are set out in *Masoud Rahimi bin Mehrzad v Attorney-General* [2025] 3 SLR 1171 ("*Masoud (HC)*") at [21]:

> (a) The applicant must have a "real interest" in bringing the action (*Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR(R) 112 ("*Karaha Bodas*") at [19]). Sufficiency of interest is *prima facie* made out once there is a violation of constitutional rights (*Tan Eng Hong* at [83] and [115]).
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> (b) There must be a "real controversy" between the parties for the court to resolve (*Karaha Bodas* at [19]). This is a matter that goes to the court's discretion and not jurisdiction. It ensures that the person seeking declaratory relief has a real interest in doing so, that they are able to secure a proper contradictor who has a true interest to oppose the declaration sought. Further, it prevents the court from being distracted

[18] AWS at [10]–[35]; RWS at [7].

by having to deal with theoretical issues from deciding real, subsisting problems (*Tan Eng Hong* at [115] and [132]).

(c) The declaration must relate to a right which is personal to the applicant, and which is enforceable against an adverse party to the litigation (*Karaha Bodas* at [15], [16] and [25]). As every constitutional right is a personal right, demonstrating that a constitutional right has been violated will suffice (*Tan Eng Hong* at [80] and [115]). Further, a violation of constitutional rights *may* be brought about by the very existence of an allegedly unconstitutional law in the statute books and/or by a real and credible threat of prosecution under an allegedly unconstitutional law. However, the Court of Appeal reiterated that such a scenario would be rare (*Tan Eng Hong* at [106] and [115]).

13 In contrast, a public right is one which is "held and vindicated by public authorities" (*Vellama* at [33]). As public rights are shared with the public in common, an applicant cannot have *locus standi* unless he has suffered some "special damage" which distinguishes his claim from those of other potential litigants in the same class (*Vellama* at [33]).

The parties' cases

The Applicants' case

14 Broadly, the Applicants assert that they have *locus standi* to bring the application for these reasons:

(a) The Applicants are Singapore citizens living in Singapore.[19] It is in the public interest to bring the application to prevent any continued violation of the protections enshrined in the Constitution.[20]

(b) The Applicants are members of the TJC. They have actively worked with death row inmates and their families, as well as campaigned to end the death penalty for many years.[21] The Applicants have close interest and direct association with the subject matter of the litigation.[22]

(c) Ms Leelavathy, Ms Sharmila and Ms Nazira are the sisters of individuals who were executed under the MDP regime (collectively the "Siblings"). Being the next-of-kin of these individuals, they have been affected and aggrieved by these executions and are entitled to bring the application on familial and reputational grounds.[23]

15 Specifically, the Applicants make these arguments. First, in relation to showing "real interest", the Applicants argue that as members of the TJC and by working directly with persons executed under the MDP and their families, the Applicants demonstrate "a genuine and close connection" to the issue. This qualifies as having real interest to bring OA 1213.[24]

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19 AWS at [8(a)].

20 Affidavit at [71(c)]–[71(e)].

21 AWS at [8(b)]–[8(c)]; Affidavit at [71(a)].

22 Affidavit at [71(b)].

23 Affidavit at [49]–[50] and [71(f)]; AWS at [7] and [8(d)].

24 AWS at [27].

16 Further, the Siblings are individuals directly aggrieved by their loss of a family member to the MDP. This constitutes real interests, given their legitimate aim to demonstrate that their family members were "wrongfully executed".[25]

17 Second, in respect of showing "real controversy", the Applicants contend that the "continuing trend of a high number of executions annually under the MDP" is itself a compelling basis to find that there is live controversy.[26] In seeking retrospective declarations regarding whether the family members of the Siblings were wrongfully executed, the Applicants have further shown a real controversy.[27]

18 Third, the Applicants argue that the MDP being unconstitutional law on the statute books is "the violation of constitutional rights". This deprivation of life violates the foundational right to life under the Constitution. Alternatively, they submit that there is a real credible threat of prosecution that could lead to the mandatory punishment of death.[28]

19 Fourth, the Applicants contend that because the TJC's mission is to abolish the death penalty, it has accrued sufficient expertise from its work. It therefore has a special interest beyond that of a general member of the public. The Applicants, as members of the TJC, similarly carry that interest.[29]

20 Finally, the Applicants rely on *Jeyaretnam Andrew Kenneth v Attorney-General* [2014] 1 SLR 345 ("*Jeyaretnam*") and argue that where the MDP is

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25 AWS at [29].

26 AWS at [31].

27 AWS at [32].

28 AWS at [34]–[35].

29 AWS at [28].

found to violate the Constitution, "such a breach would be so egregious that even an applicant *sans* right may be granted *locus standi*".[30]

The AG's case

21 According to the AG, the Applicants have failed to establish that they have the requisite *locus standi* to bring OA 1213, regardless of whether they seek to rely on their private or public rights.[31] To elaborate, the AG makes three main submissions.

22 First, the Applicants cannot rely on their private rights to establish *locus standi* for the following reasons:

(a) The Applicants have no real interest in the matter. The Applicants have not shown how their personal rights are affected.[32]

(b) There is no real controversy between the Applicants and the AG because the Applicants' personal and constitutional rights are not violated.[33] OA 1213 raises purely hypothetical issues.[34]

(c) The Applicants have not shown how any of their constitutional rights have been violated by the MDP.[35] Their objection to the death penalty or ties of kinship to persons lawfully executed do not give them *locus standi*.[36] They cannot rely on the mere existence of an allegedly

30 AWS at [33].

31 RWS at [7].

32 RWS at [26].

33 RWS at [20]–[21].

34 RWS at [20]–[21].

35 RWS at [14].

36 RWS at [15].

unconstitutional law to claim that there has been a violation of their constitutional rights.[37]

23 Second, the Applicants also cannot rely on their public rights to establish *locus standi* because they have not demonstrated any "special damage" suffered. They would only have the "satisfaction of righting a wrong" if they succeed in OA 1213 – which is plainly inadequate.[38]

24 Finally, the Applicants cannot rely on *Jeyaretnam*. They have not alleged a breach of public duties, nor can they claim that there has been the same.[39]

My decision

The Applicants do not have locus standi based on their private rights

25 I set out my analysis. In relation to the reliance on private rights, the applicable law is set out at [12] above. Having considered the matter, I find that the Applicants have failed to establish that they have *locus standi* based on their private rights.

26 First, the Applicants have failed to show that they have a real interest in bringing OA 1213. I reiterate that the crux of the *locus standi* requirement in constitutional cases is that the applicant must demonstrate a violation of *his or her* constitutional rights to establish *locus standi*. Those whose rights are not affected are prevented from being granted *locus standi* to launch unmeritorious constitutional challenges (*Tan Eng Hong* at [82]–[84]). While the Applicants

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37 RWS at [17]–[18].

38 RWS at [30].

39 RWS at [31]–[33].

rely significantly on their capacities as members of the TJC and as the next-of-kin of individuals executed under the MDP regime, they have fundamentally *not* shown how *their* constitutional rights have been violated by the law being challenged *ie,* the MDP.

27 In this connection, the Applicants' reliance on English case authorities such as *R v (on the application of the Howard League of Penal Reform) v Secretary of State for the Home Department (No 2)* [2002] All ER (D) 465 to support their argument that "real interest" is established by virtue of their knowledge and expertise on the MDP regime, is not helpful.[40] These English cases are clearly inconsistent with the Court of Appeal's well-established guidance that an applicant must demonstrate a violation of *his or her* constitutional rights before they may be found to have *locus standi* in a constitutional challenge (see [26] above).

28 At this juncture, it is apposite to address the Applicants' reliance on *Tan Eng Hong,* where the Court of Appeal suggested that a violation of an individual's constitutional rights *may*, in a *rare case*, be established by the very existence of an allegedly unconstitutional law in the statute books (at [106] and [115]).[41] In my view, the Applicants' reliance on *Tan Eng Hong* does not assist them. In *Masoud Rahimi bin Mehrzad v Attorney-General* [2024] 1 SLR 414 ("*Masoud (CA)*"), the Court of Appeal clarified its comments in *Tan Eng Hong* as follows:

> 4 … The appellants rely on [*Tan Eng Hong*], where this court stated (at [94]) that **the existence of an allegedly unconstitutional law on the statute books could suffice to show a violation of a constitutional right (and thus to found**

40 See, *eg*, AWS at [18]–[21].

41 AWS at [12] and [34].

> **standing) in an extraordinary case** … In our judgment, the appellants have taken *Tan Eng Hong* out of context.
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> 5 **It is important to note that the statements in *Tan Eng Hong* were made in the context of offence-creating provisions.** In that context, the point being made was that the effect of such a provision could be felt even if the applicant was not yet being prosecuted (*Tan Eng Hong* at [110]). **To put it another way, the very existence of such a law may cast a shadow that affects the conduct of those affected by it, such that they may be found in such circumstances to have standing to bring a challenge against the law, even if it has not been invoked against them.** While this may be true in principle, it is a fact sensitive inquiry. **The true nature of that inquiry is whether and how the law being challenged *has actually affected the applicant*. In that light, the statements in *Tan Eng Hong* are irrelevant to the present case, which does not concern offences** … As noted above, the inquiry in this context is whether the appellants *have actually been affected by the provisions*.
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> …
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> 7 **Once it is clear that the appellants *are not and will not be affected* by the impugned provisions, it becomes immediately evident that they lack standing** …
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> [emphasis in original in italics; emphasis added in bold]

29 Considering the Court of Appeal's comments in *Masoud (CA)*, it becomes immediately clear that the Applicants' reliance on *Tan Eng Hong* is wholly misplaced. The MDP is not offence-creating. Again, to reiterate, the Applicants have not shown that *they* have actually been or will actually be *personally* affected by the MDP. Simply put, the Applicants have not proven – nor have they suggested – that the MDP has or may be invoked against them. Objection to the death penalty and being aggrieved on "familial and reputational grounds" do not suffice. For the reasons above, I find that the Applicants do not have a real interest in bringing OA 1213.

30 In the same vein, I find that there is also no real controversy between the parties for this court to resolve. In my view, the Applicants' submissions in this regard (see [17] above) are unpersuasive. As I explained in *Masoud Rahimi bin*

Mehrzad v Attorney-General [2024] 4 SLR 331, the question of a real controversy goes towards the ultimate threshold issue of *locus standi*. In so far as constitutional rights are concerned, the question of a real controversy is closely related to that of a violation of rights, with both at times being dealt with in the same breadth (at [35] citing *Tan Seng Kee v Attorney-General* [2022] 1 SLR 1347 ("*Tan Seng Kee*") at [153]). However, the Applicants in the present case have failed to show that their constitutional rights have been, or may be, violated by the MDP (see [26]–[29] above). There is no real controversy between the parties for this court to resolve.

31 In these circumstances, I find that the Applicants do not have *locus standi* to commence OA 1213 based on their private rights.

The Applicants do not have locus standi based on their public rights

32 I turn now to determine whether the Applicants have *locus standi* based on their public rights. As set out above at [19], the Applicants' written submissions in this regard appears to be that they have a "special interest beyond that of a general member of public" because they are members of the TJC, which they assert is an organisation which focuses on the abolition of the death penalty and which has accrued sufficient expertise from its work.[42]

33 During the hearing, Ms Han emphasised the Applicants' objection to the AG's categorisation of them as "mere busybodies". She submitted that as members of the TJC, the Applicants have gone far beyond merely experiencing intellectual or emotional concerns on their part in relation to the exercise of capital punishment. Instead, they have worked "consistently and proactively", and engaged in "actual work and action", to advocate for the abolition of the

[42] AWS at [28].

death penalty and to support death row prisoners and their families, who she claimed are the individuals who would approach the Applicants for assistance.

34 On the other hand, Ms Sharmila contended that she has a special interest beyond that of the average citizen by virtue of her identity as a family member of Mr Syed Suhail, who had been executed under the MDP. She asserted that she has suffered "pain" and "trauma", and has experienced "psychological and reputational damage", which constitutes special damage. As I understand it, she reflected the positions of Ms Leelavathy and Ms Nazira.

35 Having considered the matter, I am unable to accept the Applicants' submissions.

36 It is undisputed that an applicant relying on their public rights cannot have *locus standi* unless he has suffered some "special damage" which distinguishes his claim from those of other potential litigants in the same class[43] (*Vellama* at [33]). In *Vellama*, the Court of Appeal endorsed the following conception of "special damage" or "special interest" (at [42]–[43], citing *Australia Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493 ("*Australia Conservation Foundation*") at 530–531:

> … **[A]n interest, for present purposes, does not mean a mere intellectual or emotional concern**. **A person is not interested within the meaning of the rule, unless he is likely to gain some advantage, other than the satisfaction of righting a wrong**, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs, if his action fails. **A belief, however strongly felt, that the law generally, or a particular law, should be observed, or that conduct of a particular kind should be prevented, does not suffice to give its possessor *locus standi***. If that were not so, the rule requiring special interest would be meaningless. Any plaintiff

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[43] AWS at [15]–[16]; RWS at [28].

> who felt strongly enough to bring an action could maintain it. [emphasis added]

37 In the present case, the "special damage" or "special interest" exception has clearly not been made out. The Applicants have not highlighted any advantage that they would experience if OA 1213 is allowed, other than having the satisfaction of righting a purported wrong**.** In other words, the Applicants have not highlighted any damage which they have suffered due to, or any special interest of theirs which has been affected by, the purported unconstitutionality of the MDP. While Ms Han emphasised the Applicants' expertise and the "actual work and action" that they have engaged in, among other things, to assist prisoners on death row and their families, such voluntary action fundamentally stems from and is connected to the Applicants' intellectual and emotional belief that the death penalty should be abolished. Similarly, while I do not discount the purported psychological impact that the MDP has had on the Siblings and their families, they are essentially seeking to right the perceived wrongs. The Applicants' belief in the unconstitutionality of and/or the need to abolish the death penalty, however strongly felt, does not suffice to give the Applicants *locus standi*. If that were not so, as the Court of Appeal in *Vellama* observed, the rule requiring special interest would be meaningless – given that any applicant who felt strongly enough to bring an action could possess *locus standi* to do so (see [36] above).

38 In these circumstances, the Applicants have failed to establish that they have *locus standi* based on their public rights.

The Applicants do not have any other basis to ground locus standi

39 As set out at [20] above, the Applicants also rely on *Jeyaretnam* to submit that "an applicant *sans* right may be granted *locus standi*" in the

circumstance that the MDP is found to be unconstitutional. In my judgment, such an argument lacks merit. While the Court of Appeal recognised this possibility, *locus standi* would only arise in the rare case "where a non-correlative rights generating public duty [of sufficient gravity] is breached". In other words, the Court of Appeal accepted the possibility where an applicant (who would otherwise not possess *locus standi* in a constitutional challenge based on his or her private and public rights), could nevertheless still be considered to have *locus standi* in an "exceptional situation" where a public body has breached its public duties in an "egregious manner" (*Jeyaretnam* at [62]–[64]). However, the fundamental issue is that the Applicants have *not* explained *how* the MDP represents a breach of public duties,[44] much less proven that any such breach of public duties is of sufficient gravity such that it would be in the public interest for the court to hear the case (see *Jeyaretnam* at [64]).

Conclusion

40 Accordingly, for all the reasons above, I find that the Applicants lack the requisite *locus standi* to commence OA 1213.

Whether the MDP is inconsistent with Arts 9(1), 12(1) and 93 of the Constitution

41 In any event, as parties have argued extensively on the substantive issue, I proceed to consider the merits of the application. In this connection, the Applicants make these main submissions:

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[44] See AWS at [33].

(a) The MDP breaches the right to a fair trial and is contrary to the rules of natural justice.[45] The MDP is also procedurally and substantively unfair, contrary to Art 9(1) of the Constitution.[46]

(b) The MDP is contrary to the common law principle (which stood as of 11 November 1993) that punishment must be proportionate.[47]

(c) The MDP is contrary to the reasonable classification test, equal protection of the law, and the principle of proportionality contained in Art 12(1) of the Constitution.[48]

(d) The MDP is contrary to Art 93 of the Constitution because the MDP violates Arts 9(1) and 12(1) of the Constitution.[49]

42 In response, the AG makes the following main submissions:

(a) The MDP is consistent with Art 9(1) of the Constitution for the following reasons:

(i) It is not procedurally or substantively unfair.[50] The MDP is a sentence imposed only after conviction and does not interfere with an accused's right to a fair trial.[51]

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45 Affidavit at [72(a)]–[72(b)]; AWS at [61]–[67].

46 Affidavit at [72(d)]; AWS at [77].

47 Affidavit at [72(c)]; AWS at [68]–[77].

48 Affidavit at [72(e)]–[72(g)]; AWS at [78]–[118].

49 Affidavit at [72(h)]; AWS at [119]–[126].

50 RWS at [48].

51 RWS at [40]–[41].

(ii) The principle of proportionality in sentencing does not apply to the legislative power to prescribe punishment such as the MDP.[52]

(b) The MDP does not violate Art 12(1) of the Constitution for the following reasons:

(i) The MDP is consistent with the reasonable classification tests set out in *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 ("*Lim Meng Suang*") and *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("*Syed Suhail*").[53]

(ii) The principle of proportionality is not part of Art 12(1) of the Constitution.[54]

(c) The MDP is consistent with Art 93 of the Constitution because the power to prescribe punishments for offences is part of the legislative power and not the judicial power.[55]

43 I now address the contentions in relation to each of the provisions within the Constitution.

Article 9 of the Constitution

The applicable law

44 Article 9(1) of the Constitution states:

Liberty of the person

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52 RWS at [45].

53 RWS at [55]–[60].

54 RWS at [66].

55 RWS at [70]–[72].

> **9.**—(1) No person shall be deprived of his life or personal liberty save in accordance with law.

The parties' cases

(1) The Applicants' case

45 First, the Applicants submit that the term "law" in Art 9(1) of the Constitution incorporates the rule of law, and the rule of law includes a right to a fair trial.[56] They claim that a fair trial includes permitting the accused to make representations before a decision adverse to him or her is made, such as the infliction of capital punishment.[57] In this connection, they contend that the MDP excludes the courts from the sentencing process apart from pronouncing the sentence, which precludes any right for an accused to be heard on a sentence that is appropriate to the offending. For these reasons, the Applicants submit that the MDP violates an accused's right to a fair trial, is procedurally unfair, and is contrary to Art 9(1) of the Constitution.[58]

46 The Applicants' second argument is that the MDP "is contrary to the common law principle that punishment must be proportionate in Art 9(1)".[59] They contend that the MDP contravenes this fundamental principle of law because it leads to punishment that may be incommensurate or disproportionate with the wide disparities in the circumstances of the offending.[60]

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56 AWS at [61].

57 AWS at [62].

58 AWS at [63], [66]–[67].

59 AWS at section VIII.

60 AWS at [73]–[77].

(2) The AG's case

47 The AG submits that the MDP does not violate the fundamental rules of natural justice contained in Art 9(1) of the Constitution. Nor does it infringe on the right to a fair trial and the right to be heard.[61] This is because the MDP is a sentence imposed only after conviction and does not interfere with the accused's procedural rights at trial – a court can only impose the MDP in a relevant capital charge after the prosecution has proven the charge beyond reasonable doubt in a fair trial.[62]

48 The AG also refutes the argument that the MDP is "contrary to the common law principle that punishment must be proportionate in Art 9(1)".[63]

My decision

49 Having carefully considered the parties' submissions, I do not accept the Applicants' arguments for these reasons.

50 Before delving into the Applicants' submissions, it is useful to explain the nature and scope of the right to be heard, and its relation to Art 9(1) of the Constitution. It is well-established that the term "law" in Art 9(1) of the Constitution incorporates the fundamental rules of natural justice (*Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 ("*Ong Ah Chuan*") at [26]). In this connection, the fundamental rules of natural justice include the right to be heard – otherwise referred to as the hearing rule (*Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 ("*Datchinamurthy*") at [23]).

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61 RWS at [34]–[35], [40]–[41].

62 RWS at [40]–[41].

63 RWS at [42]−[47].

51 The right to be heard emphasises that no person should be condemned without having been heard or having been given prior notice of the allegations – it requires that the party liable to be directly affected by the outcome of the proceedings should be given notice of the allegation against him and should be given a fair opportunity to be heard (*Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 at [7]). An essential aspect of the right to be heard has also been described as a person having a reasonable opportunity of presenting his case, and that he or she has a fair opportunity to correct or contradict the case and the allegations of the other party (*Datchinamurthy* at [23]). In the context of criminal proceedings, the fundamental rules of natural justice (including the right to be heard) are procedural rights aimed at securing a fair trial and for determining the guilt of a person charged with a criminal offence (*Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 ("*Yong Vui Kong 2015*") at [63]–[64] citing *Haw Tua Tau v Public Prosecutor* [1981–1982] SLR(R) 133 at [9]).

52 While the right to be heard is a fundamental rule of natural justice, this right is not absolute. The Court of Appeal emphasised that the "rules of natural justice are not engraved on tablets of stone" – what fairness demands will depend on the subject matter and the statutory framework in which it operates. What is fair must also depend on the object of the process at the stage in question (*Manjit Singh s/o Kirpal Singh v Attorney-General* [2013] 2 SLR 844 ("*Manjit Singh*") at [88] citing *Lloyd v McMahon* [1987] AC 625 at 702H):

> … We would reiterate that an essential feature of natural justice is fairness, which also encompasses the right to be heard. **What fairness demands will depend on the subject matter and the context.** As Lord Bridge of Harwich stated in *McMahon* ([55] *supra*) at 702, "**the so-called rules of natural justice are not engraved on tablets of stone" and much would depend "on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates". What is fair must**

> **depend on the object of the process at the stage in question**: see [*Subbiah Pillai v Wong Meng Meng* [2001] 2 SLR(R) 556] at [58] … [emphasis added]

With the applicable law in mind, I turn now to the Applicants' arguments.

53 First, the Applicants' contention that the "sentencing process" of the MDP "preclud[es] any right [for an accused] to be heard on a sentence that is appropriate to the offending"[64] is not entirely accurate. There is nothing which precludes a person convicted of a capital offence under the MDA, and which is punishable with the MDP, from making any submissions on sentence to the court. In particular, under section 33B of the MDA, a person convicted of a capital offence under the MDA may seek to prove that their involvement in the offence was limited to, among other things, being a courier, and/or that he or she was suffering from an abnormality of mind at the time of the offence: ss 33(2) and (3) of the MDA. In certain circumstances (provided that other requirements, where applicable, are met), the court may not impose the MDP. This statutory framework demonstrates that accused persons convicted of capital offences under the MDA that would otherwise attract the MDP do, in fact, retain a right to be heard in relation to sentencing, albeit within the defined statutory parameters in s 33B of the MDA.

54 More importantly, even accepting, *arguendo*, that the MDP does not afford an accused person convicted of a capital offence under the MDA a right to be heard in relation to the MDP, I do not agree that the MDP falls foul of Art 9(1) of the Constitution.

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64 AWS at [63].

55 The right to be heard, whilst constituting a fundamental rule of natural justice, remains essentially a *procedural right* aimed at securing a fair trial and *determining the guilt* of a person charged with a criminal offence (see [51] above). The Court of Appeal in *Manjit Singh* clearly emphasised that the fundamental rules of natural justice are not absolute – what fairness requires would depend on the subject matter and context (see [52] above). In my judgment, the principles set out by the Court of Appeal are directly applicable to the present case. The statutory framework in which the MDP operates neither intends nor permits accused persons who are both: (a) convicted of a capital offence under the MDA; and (b) unable to satisfy the requirements set out in ss 33B(2) or (3) of the MDA, to have a right to be heard in relation to the imposition of the MDP. In other words, as the AG contends,[65] fairness in these circumstances only requires ensuring that the accused's procedural rights at trial are protected. The MDP, being a sentencing outcome *after* the determination of guilt at a fair trial, and *after* the determination that ss 33B(2) and (3) of the MDA do not apply, does not violate the accused's right to a fair trial and to be heard.

56 At this juncture, it is apposite to address the Applicants' reliance on two specific paragraphs of the Caribbean Court of Justice's decision in *Nervais v R* [2018] CCJ 19 (AJ) ("*Nervais*").[66] They specifically cite paragraphs 49 and 70 of the decision in *Nervais* and argue that the right to a fair trial extends to sentencing; and because the MDP does not afford the courts an ability to impose a sentence appropriate to the offending, the MDP breaches the right to a fair trial and is contrary to Art 9(1) of the Constitution.[67] Given the Applicants' reliance on this case, the decision in *Nervais* bears closer analysis.

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65 RWS at [40]–[41].

66 AWS at [64].

67 AWS at [61]–[65].

57 In *Nervais*, the appellants were convicted of murder and sentenced to death in accordance with s 2 of the Offences Against the Persons Act (Cap 141) ("OAPA"). The appellants appealed against their convictions and sentences, arguing, among other things, that the mandatory nature of the death penalty under s 2 of the OAPA (the "OAPAMDP") was unconstitutional (at [1]–[2]). The appellants' main arguments in this regard are as follows (at [46]):

(a) the OAPAMDP deprives the appellants of the right to make representations to court as to why their lives should not be taken;

(b) it violates the basic principle that punishment must fit and be proportionate to the circumstances of the crime; and

(c) it violates universally accepted standards of justice.

58 The Caribbean court found in favour of the appellants and held that the OAPAMDP violated the right to protection of the law (at [49] and [69]). Before reaching their decision, the Caribbean court made certain observations. For present purposes, I highlight a few relevant ones below:

(a) The Caribbean court, in examining the reach and content of the right to protection of the law under the Constitution of Barbados, was of the view that this right encompassed the State's (*ie*, Barbados) international obligations (at [44]). In this respect, the Caribbean court noted that the mandatory death penalty has been found by international human rights bodies to be arbitrary and to have deprived individuals of the most fundamental human rights without considering whether the death sentence as an exceptional form of punishment was appropriate in the particular circumstances of an individual's case (at [47]).

(b) Mandatory penalties deprive the court of an opportunity to exercise the judicial function of tailoring the punishment to fit the crime. The right to a fair trial extends to both the conviction and sentencing of the accused and must include the right to appeal or apply for review by a higher court (at [49]).

(c) The OAPAMDP was antithetical to the separation of powers doctrine as it reduced the court's sentencing role to "rubber-stamping" the "dictates of the Legislature", when sentencing is a role constitutionally reserved for the Judiciary (at [70]).

59 Having considered the facts and decision in *Nervais*, I find the Applicants' reliance on this case misplaced for the following reasons.

60 First, as I explained above at [58(a)], the Caribbean court determined that the constitutional right to protection of the law, by which the OAPAMDP was found unconstitutional, encompassed the State's international obligations. In this regard, the Caribbean court acknowledged that the mandatory death penalty was found by international human rights bodies to be arbitrary and in violation of fundamental human rights. In contrast, as the AG highlighted, Singapore has a dualist regime. This means that international law and domestic law are regarded in Singapore as separate systems of law, and the former does not form part of the latter until and unless it has been transposed into domestic law by legislation. Simply put, it is not open to a Singapore court to rewrite the Constitution to accommodate a supposed rule of international law (*Nagaenthran a/l K Dharmalingam v Attorney-General* [2022] 2 SLR 211 at [57]–[58] citing *Yong Vui Kong 2015* at [29]; *Lim Meng Suang* at [188]). Indeed, Mr Howe, at the hearing, confirmed that the Applicants were not relying on any rule of international law.

61 More importantly, in so far as the Applicants rely on *Nervais* to challenge the Legislature's power to enact laws which impose mandatory penalties like the MDP, such an argument is clearly inconsistent with domestic jurisprudence. Questions of whether there should be the MDP in Singapore are issues squarely for the Legislature to decide, and there is nothing unusual in a capital sentence being mandatory (*Ong Ah Chuan* at [33]). The doctrine of the separation of powers calls for each branch to respect the institutional space and legitimate prerogatives of the others. The courts cannot amend or modify statutes and act as mini-legislatures (*Tan Seng Kee* at [15]; *Lim Meng Suang* at [76]–[77]).

62 Ultimately, as the Court of Appeal observed, it is not "appropriate or useful to have regard to or place much weight on the constitutional developments in *other jurisdictions* in undertaking an exercise of interpreting *Singapore's* Constitution" (*Jumaat bin Mohamed Sayed v Attorney-General* [2025] 1 SLR 1287 ("*Jumaat*") at [102] [emphasis in original]). Indeed, at the hearing, Mr Howe acknowledged that the Applicants are mindful that the Constitution is primarily to be interpreted within its own four walls and not in the light of analogies drawn from other countries (see also *Jumaat* at [102], citing *The Government of the State of Kelantan v The Government of the Federation of Malaya* [1963] MLJ 355).

63 For the reasons above, I am unable to agree with the Applicants' arguments. I find that the MDP does not violate the right to a fair trial and the right to be heard.

64 I turn now to consider the Applicants' second argument in relation to the MDP *vis-à-vis* Art 9(1) of the Constitution which has been set out at [46] above. To reiterate, the Applicants' second argument chiefly concerns their assertion

that the MDP offends the English common law principle of proportionality, which they claim has been incorporated into Art 9(1) of the Constitution.[68] In my judgment, the Applicants' second argument is equally meritless.

65 First, in so far as the Applicants rely on Art 2(1) of the Constitution to submit that the English common law principle of proportionality forms part of the term "law" in Art 9(1) of the Constitution,[69] I find such an argument wholly misconceived. The term "law" in Art 9(1) of the Constitution includes "the common law *in so far as it is in operation in Singapore*" [emphasis added] (see Art 2(1) of the Constitution). In this regard, the Applicants' reliance on *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") to support their assertion that the principle of proportionality has "directly taken root in Singapore jurisprudence" is entirely misconceived.[70] While the High Court in that case endorsed the notion of proportionate punishment, this endorsement was in the context of the totality principle in sentencing within the prescribed range of sentences provided by Legislature. The case is not about constitutional law (see *Shouffee* at [47]–[50]).

66 Instead, in the context of constitutional and administrative law, it is trite that the Singapore courts have categorically rejected importing the notion of proportionality into Singapore (*Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*") at [87]):

> **Another fundamental difference now existing between English law and Singapore law is the applicability of the notion of proportionality.** This is very much a continental European jurisprudential concept imported into English law by virtue of the UK's treaty obligations. This jurisprudential

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68 See AWS at [49], [59], [68]–[77].

69 See AWS at [49], [59], [68]–[77].

70 AWS at [72].

> approach, inter alia, allows a court to examine whether legislative interference with individual rights corresponds with a pressing social need; whether it is proportionate to its legitimate aim and whether the reasons to justify the statutory interference are relevant and sufficient …
>
> … Proportionality is a more exacting requirement than reasonableness and requires, in some cases, the court to substitute its own judgment for that of the proper authority. **Needless to say, the notion of proportionality has never been part of the common law in relation to the judicial review of the exercise of a legislative and/or an administrative power or discretion. Nor has it ever been part of Singapore law.**
>
> [emphasis added]

67 More recently, the High Court in *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 ("*Xu Yuanchen*") similarly reiterated that the adoption of the proportionality analysis in other jurisdictions does not determine its applicability in Singapore. The established position in Singapore is that the concept of proportionality "has never been part of our constitutional law" (*Xu Yuanchen* at [83] citing *Chee Siok Chin* at [87]). While Mr Howe argued that this position should shift, I am unable to agree with his submission. Adopting a proportionality doctrine would contradict the principle of separation of powers, which is well established in Singapore constitutional law (*Xu Yuanchen* at [84] citing *Wham Kwok Han Jolovan v Public Prosecutor* [2021] 1 SLR 476 at [27]).

68 For all the reasons above, I reject the Applicants' submissions that the MDP violates the right to be heard and is inconsistent with the principle of proportionality in Art 9(1) of the Constitution.

Article 12(1) of the Constitution

69 I turn now to consider the Applicants' submissions in relation to the MDP *vis-à-vis* Art 12(1) of the Constitution.

The applicable law

70 Article 12(1) of the Constitution states:

> **Equal protection**
>
> **12.**—(1) All persons are equal before the law and entitled to the equal protection of the law

71 The test for whether a particular legislation breaches Art 12(1) of the Constitution is the "reasonable classification test". As I explained in *Masoud (HC)* at [86], the courts have thus far adopted two approaches to the reasonable classification test:

(a) The first approach is that adopted in *Lim Meng Suang*. Under this approach, the test serves the minimal threshold function of requiring logic and coherence in the statutory provision concerned (*Lim Meng Suang* at [66]):

(i) The relevant inquiry under the first limb is whether the relevant differentia can be understood or apprehended by the intellect or understanding, or is so unreasonable as to be illogical and/or incoherent so that no reasonable person would ever contemplate the differentia concerned as being functional as an intelligible differentia (*Tan Seng Kee* at [309]–[310]).

(ii) As for the second limb, the inquiry is whether the differentia bears a "rational relation" to the legislative object of the statutory provision in question. Such a rational relation will, more often than not, be found, as a perfect relation or complete coincidence between the differentia and legislative object is not required (*Tan Seng Kee* at [311]).

(b) The second approach is that adopted in *Syed Suhail*, which contemplates a higher level of scrutiny when evaluating whether a statutory provision satisfies the reasonable classification test, especially if the provision has a significant bearing on an individual's life and liberty (*Tan Seng Kee* at [328]):

(i) Under the first limb, the inquiry is directed towards identifying the purported criterion for differential treatment, "so that its legitimacy may then be assessed properly" under the second limb (*Tan Seng Kee* at [314]). Unlike the approach in *Lim Meng Suang*, it is not concerned with the reasonableness (or any lack thereof) of the differentia in question, even in cases where the differentia is extremely unreasonable (*Tan Seng Kee* at [315] and [318]).

(ii) Under the second limb, the inquiry is whether the differential treatment is, or whether it bears, any rational relation to any conceivable object of the law in question (*Tan Seng Kee* at [318]–[319]). Unlike the approach in *Lim Meng Suang*, however, the court considers the context in determining how stringently a statutory provision should be scrutinised. While the relationship between the differentia and the object need not be perfect, the court would be averse to any framing of the object of a law which would be tantamount to saying that its object is to introduce the differentia which it embodies, as such circular reasoning would render the reasonable classification test purely formalistic and effectively denude Art 12 of the Constitution of real force (*Tan Seng Kee* at [320] and [325]–[327]).

72 The Court of Appeal in *Tan Seng Kee* left open the question of which of the two approaches above should be preferred (*Tan Seng Kee* at [329]).

The parties' cases

(1) The Applicants' case

73 The Applicants argue that the MDP is inconsistent with Art 12(1) of the Constitution. First, the Applicants submit that the MDP fails the reasonable classification test due to the following reasons:[71]

(a) At the first limb of the reasonable classification test, the Applicants argue that there are "great disparities of circumstance" among those facing the MDP – there are "mules" or "couriers" who carry relatively small quantities of drugs, while others who set up "drug factories" and manufacture large quantities of drugs.[72] Save for the purposes of establishing culpability, there is no intelligible differentia in "classifying such huge disparities in the circumstances of the commission of offence together".[73] This classification cannot extend to punishment. This classification for the purposes of the MDP is not intelligible, rational or reasonable.[74]

(b) Under the second limb of the *Syed Suhail* test, the Applicants contend that the thresholds applied in s 33 of the MDA differentiating the imposition of the MDP and a sentence of imprisonment and/or

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71 AWS at [95].

72 AWS at [85].

73 AWS at [86], [94]–[95].

74 AWS at [86]–[87].

caning are unreasonable and do not carry a sufficient rational relation to or further the object of the MDA.[75]

74 Second, the MDP is contrary to Art 12(1) of the Constitution as convictions based on different culpability and/or circumstances are treated alike.[76]

75 Third, the MDP is contrary to the principle of proportionality contained in Art 12(1) of the Constitution.[77]

(2) The AG's case

76 The AG, on the other hand, submits that the MDP is not contrary to Art 12(1) of the Constitution. First, the AG argues that the Applicants' arguments (while repackaged) have already been considered and rejected by the Court of Appeal.[78] Second, the AG contends that the principle of proportionality is not part of Art 12(1) of the Constitution – this principle has been roundly rejected by the Singapore courts.[79]

My decision

77 At the hearing, Mr Howe emphasised that the differentia under the MDP regime is unintelligible and unreasonable. The Applicants contend that the differentia should take into account the circumstances and culpability of the offender. They also explained that the present case should be distinguished from

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75 AWS at [89]–[95].

76 AWS at [96]–[100].

77 AWS at [101]–[118].

78 RWS at [61]–[65].

79 RWS at [66]–[67].

previous cases like *Ong Ah Chuan* and *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 ("*Yong Vui Kong 2010*"). Unlike those cases, they emphasise that the present application does not seek to target the discrimination between different classes of individuals (*ie*, they are not challenging the differentia between individuals who traffic in more than the capital threshold of drugs, versus those who traffic in quantities of drugs below the capital threshold). Instead, they stress that their case focuses on how individuals with vastly different culpabilities/circumstances are classified together and punished with the MDP, despite potentially engaging in different acts and having different culpabilities/circumstances.

78 Having considered the parties' submissions, I am unable to agree with the Applicants' case. I begin by addressing the Applicants' contentions regarding the first limb of the reasonable classification test. In my view, these arguments are based on a misinterpretation of the first limb of both the *Lim Meng Suang* and *Syed Suhail* tests. Under both tests, the substance of the inquiry is one of identification – to identify the purported criterion for differential treatment (see [(71(a)(i)) and [71(b)(i)] above]. In this light, it is clear that the first limb of both tests are satisfied. The imposition of the MDP is dependent on the amount and weight of drugs. Clearly, this is an intelligible criterion, and it passes the stricter first limb test in *Lim Meng Suang*. The Applicants' contentions that this differentia is unreasonable and should take into account the culpability/circumstances of an offender is therefore untenable – especially given that the first limb of the *Syed Suhail* test is not concerned with the reasonableness (or lack thereof) of the differentia in question (see [71(b)(i)] above).

79 More fundamentally, I agree with the AG that the Applicants' submissions have already, in substance, been considered and rejected by the

Singapore courts in previous cases. Contrary to the Applicants' contentions, these are not *fresh* issues. In *Ong Ah Chuan*, the appellants challenged the discrimination between different classes of individuals, *ie*, the imposition of capital punishment on a class of individuals who traffic in 15g of heroin or more, versus the imposition of non-capital punishment on a class of individuals who traffic in less than 15g of heroin. The appellants argued that the MDP was arbitrary, since it "debarred the court in punishing offenders from discriminating between them according to their individual blameworthiness" (at [32] and [36]). In dismissing the appellants' arguments, the Privy Council emphasised the following (at [37]–[41]):

> 37 … **[W]hether this dissimilarity in circumstances justifies any differentiation in the punishments imposed upon individuals who fall within one class and those who fall within the other, and, if so, what are the appropriate punishments for each class, are questions of social policy**. Under the Constitution, which is based on the separation of powers, **these are questions which it is the function of the Legislature to decide, not that of the Judiciary**.
>
> … **It is for the Legislature to determine** in the light of the information that is available to it about the structure of the illicit drug trade in Singapore, and the way in which it is carried on, **where the appropriate quantitative boundary lies between these two classes of dealers** …
>
> [emphasis added]

80 In particular, I highlight that the Privy Council squarely addressed the objections raised by the Applicants against the "like" treatment of "unlike" offenders in the class of offenders who traffic in the capital amounts of drugs, by emphasising the following:

> 39 **Wherever a criminal law provides for a mandatory sentence for an offence there is a possibility that there may be considerable variation in moral blameworthiness, despite the similarity in legal guilt of offenders upon whom the same mandatory sentence must be passed** … But Art 12(1) of the Constitution is not concerned with equal punitive treatment for equal moral blameworthiness; **it is**

> **concerned with equal punitive treatment for similar legal guilt.** [emphasis added]

81 Similarly, in *Yong Vui Kong 2010*, the Court of Appeal highlighted the following:

> 49 With regard to the offence of drug trafficking, **what is an appropriate threshold of culpability for imposing the MDP is, in our view, really a matter of policy, and it is for Parliament to decide**, having regard to public interest requirements, how the scale of punishment ought to be calibrated. This is *par excellence* a policy issue for the Legislature and/or the Executive, and not a judicial issue for the Judiciary. **The MDA does not recognise any gradations in culpability in drug trafficking offences except in terms of the amount of controlled drugs trafficked**. In this regard, it is a matter of common sense that the larger the amount trafficked, the greater the likelihood of harm done to society … [emphasis added]

82 While the Applicants have framed their arguments somewhat differently from those raised in the cases above, the fact remains that the preceding cases make clear that the appropriate threshold which triggers the MDP under the MDA is strictly a matter of policy for the Legislature to decide. As the Privy Council emphasised, there is bound to be some variation in circumstances/culpability between individuals charged for and convicted of offences punishable with a mandatory sentence. The mere fact that there is a certain level of disparity in circumstances/culpability between the offenders who face the MDP cannot, and does not, make the law arbitrary, nor does it make the law contrary to Art 12(1) of the Constitution. Indeed, as the Court of Appeal observed in *Yong Vui Kong 2010*, even if the capital thresholds under the MDA are significantly increased, (or, for that matter, if the relevant differentia under the MDA takes into account the circumstances and culpability of the offender as the Applicants argue for) the Applicants would *still* be able

to argue that such a modified sentencing regime fails to adequately differentiate between the acts and circumstances of different drug traffickers within that same class of offenders (at [115]). In other words, accepting the Applicants' submissions would arguably result in a situation where no offence punishable with a mandatory sentence would ever be constitutional – since there would always be some extent of distinction between different offenders, regardless of how high the threshold which triggers the mandatory sentence (*eg*, the MDP), is set at. In my view, this cannot be right.

83 Ultimately, as the Court of Appeal in *Yong Vui Kong 2010* observed, even if "a differentia which takes into account something more than merely the quantity of controlled drugs trafficked may be a better differentia … what is a better differentia is a matter on which reasonable people may well disagree". What differentia should be adopted for the imposition of the MDP is really a question of social policy and one which lies within the province of the Legislature, not the Judiciary (see *Yong Vui Kong 2010* at [113]).

84 The Applicants also contend that the thresholds set in the MDA which trigger the operation of the MDP are unreasonable and/or do not carry a sufficient rational relation to the object of the MDA. Once again, these arguments, in substance, have already been considered and dismissed by the Singapore courts.

85 In *Yong Vui Kong 2010*, the appellant, among other things, argued that the difference between the punishment for trafficking in just slightly more than 15g of diamorphine and that for trafficking in just slightly under 15g of this drug was illogical (at [103]). The Court of Appeal rejected this argument, holding that this differentia was not arbitrary, and had a rational relation to the social object of the MDA (*Yong Vui Kong 2010* at [112] citing *Ong Ah Chuan* at [38]):

> 112 **Where the MDA is concerned, it cannot be said that the 15g differentia is purely arbitrary**. In *Ong Ah Chuan*, the Privy Council said (at [38]) in relation to the question of whether the 15g differentia bore a "reasonable relation" … to the social object of the MDA:
>
> > **The social object of the [MDA] is to prevent the growth of drug addiction in Singapore by stamping out the illicit drug trade** and, in particular, the trade in those most dangerously addictive drugs, heroin and morphine. The social evil caused by trafficking which the [MDA] seeks to prevent is broadly proportional to the quantity of addictive drugs brought on to [*sic*] the illicit market. **There is nothing unreasonable in the legislature's holding the view that an illicit dealer on the wholesale scale who operates near the apex of the distributive pyramid requires a stronger deterrent to his transactions and deserves more condign punishment than do dealers on a smaller scale who operate nearer the base of the pyramid. It is for the legislature to determine in the light of the information that is available to it about the structure of the illicit drug trade in Singapore, and the way in which it is carried on, where the appropriate quantitative boundary lies between these two classes of dealers.**
>
> [emphasis added]

86 Considering the past cases, I do not accept the Applicants' submissions. The Applicants themselves acknowledge that the MDA is an act "for the control of dangerous or otherwise harmful drugs and substances and for purposes connected therewith".[80] Seen in this light, it cannot be seriously argued that the thresholds which trigger the MDP under the MDA do not bear rational relation to the object of the MDA. As the Privy Council emphasised in *Ong Ah Chuan*, there is nothing unreasonable in the Legislature deciding that an individual who traffics in a larger amount of illicit drugs deserves a stronger deterrent and a more severe punishment (*ie*, the MDP). In this connection, I pause to reiterate

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[80] AWS at [89]–[90].

that the threshold which triggers the operation of the MDP is really a matter of policy for the Legislature to decide (see [77]–[83] above).

87 In these circumstances, it simply cannot be said that the thresholds which trigger the MDP under the MDA are unreasonable and/or do not bear sufficient rational relation to the object of the MDP under the second limb of the *Syed Suhail* test. Accordingly, for the reasons above, the Applicants fail to prove that the MDP is inconsistent with the reasonable classification test.

88 I turn to the Applicants' final argument that the MDP is contrary to the principle of proportionality contained in Art 12(1) of the Constitution. Similar arguments have already been raised earlier at [46] and [64]. And for the same reasons explained at [65]–[67] above, I do not accept the Applicant's contentions.

89 To reiterate, in the context of Singapore constitutional and administrative law, the principle of proportionality has been categorically rejected by the Singapore courts (see, *eg*, *Chee Siok Chin* at [87]; *Xu Yuanchen* at [84]; *Ong Ming Johnson v Attorney-General* [2020] SGHC 63 ("*Johnson*") at [216] and [237]). In the context of equal protection clauses such as Art 12(1) of the Constitution, adopting the principle of proportionality would necessarily involve a review of the legitimacy of the object of a statute, risking the courts assuming legislative function and acting like a "mini-legislature", something which the Court of Appeal specifically warned against (see [61] above; *Johnson* at [216] citing *Lim Meng Suang* at [82]).

90 Accordingly, for all the reasons above, I am unable to accept the Applicants' submissions. The MDP is consistent with Art 12(1) of the Constitution.

Article 93 of the Constitution

91 I turn now to the Applicants' last set of arguments which relate to Art 93 of the Constitution.

The applicable law

92 Art 93 of the Constitution states:

> **Judicial power of Singapore**
>
> **93.** The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force.

The parties' cases

(1) The Applicants' case

93 The Applicants accept that the power to prescribe punishment lies with the Legislature, and "the prescription of a mandatory penalty does not automatically amount to usurpation of judicial power".[81] However, they submit that because the MDP violates Arts 9(1) and 12(1) of the Constitution, the MDP "usurps judicial power by compelling the Courts to impose an unconstitutional punishment".[82] Thus, they submit that the MDP is contrary to Art 93 of the Constitution.[83]

(2) The AG's case

94 The AG, on the other hand, argues that the MDP is consistent with Art 93 of the Constitution, and that the Applicants have no basis to argue that

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81 AWS at [120].

82 AWS at [122].

83 AWS at [126].

the MDP infringes the same.[84] The power to prescribe punishments for offences lies with the Legislature and not the Judiciary.[85]

My decision

95 I have already determined that the MDP does not violate Arts 9(1) and 12(1) of the Constitution (see [68] and [90] above). Therefore, the Applicants' argument that the MDP violates Art 93 of the Constitution by virtue of its unconstitutionality, clearly cannot stand. I therefore find that the MDP is consistent with Art 93 of the Constitution.

Conclusion

96 The Applicants clearly have no *locus standi* to bring OA 1213, whether based on their public or private rights or on any other basis. In any event, OA 1213 is bound to fail on the merits. Accordingly, I dismiss OA 1213. Parties are to submit their costs submissions (limited to five pages) within two weeks of the judgment.

Hoo Sheau Peng
Judge of the High Court

84 RWS at [70]–[72].

85 RWS at [72].

The applicants in person;
Hay Hung Chun and Chng Luey Chi (Attorney-General's Chambers)
for the respondent.
