IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 21

Court of Appeal / Criminal Motion No 11 of 2026

Between

Chong Hoon Cheong

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Review]
[Criminal Procedure and Sentencing — Stay of execution]

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v
Public Prosecutor

[2026] SGCA 21

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Tay Yong Kwang JCA:

Introduction

1 The Applicant is a prisoner awaiting capital punishment and his execution is scheduled to take place on Wednesday, 29 April 2026. On Monday, 27 April 2026, the Applicant filed the present application by way of a Criminal Motion under s 394H of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") for permission to make a review application in respect of the Court of Appeal's decision in CA/CCA 28/2021 ("CCA 28"). The Application is placed before me as a single Judge sitting in the Court of Appeal pursuant to s 394H(6)(*a*) of the CPC.

2 The Criminal Motion comprises two cover pages without stating the reliefs that the Applicant is seeking. However, in the concluding paragraphs of

his "Affidavit and Written Submissions" accompanying his application, the Applicant states the following:

> 34 Thus, the Applicant submits that in view of the above, the Applicant conviction for drug trafficking and death sentence should be reviewed.
>
> 35 The Applicant is thus pleading a reduced sentence of life imprisonment or a reduced charge to a non-capital sentence.

Facts

Background

3 The Applicant was arrested by Central Narcotics Bureau ("CNB") officers in the evening of 8 December 2015 in his rented room at 26B Hamilton Road. Around the same time that evening, CNB officers also arrested Eng Kok Seng in the vicinity after he was seen leaving 26B Hamilton Road earlier.

4 The Applicant claimed trial to a capital charge of having in his possession not less than 25.01g of diamorphine for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The drugs were contained in 27 packets found in his rented room. Of these packets, 25 packets were found on the floor of the room, while one packet (Exhibit D1A2) was found on the bottom right compartment of a dressing table in the room.

The trial

5 The Applicant claimed trial to the capital charge and the trial took place over several tranches between 13 August 2019 and 2 March 2021 before the General Division of the High Court. On 13 September 2021, the trial Judge convicted the Applicant on the charge. The trial Judge found that the Applicant was not merely a courier as he was involved in repacking the drugs to facilitate

distribution. Further, he was not given a certificate of substantive assistance by the Public Prosecutor. The trial Judge's decision is set out in *Public Prosecutor v Chong Hoon Cheong* [2021] SGHC 211 ("*Chong Hoon Cheong (HC)*").

6 At the trial, the Applicant did not dispute that he had possession of diamorphine or that he had knowledge of the nature of the drug (*Chong Hoon Cheong (HC)* at [2]). He only disputed the purpose for which he possessed the drugs in Exhibit D1A2 which contained 14.08g of diamorphine. He contended that only the drugs in the other seized packets (containing 10.93g of diamorphine) were in his possession for the purpose of trafficking while the remaining 14.08g of diamorphine in Exhibit D1A2 was for his own consumption ("the Consumption Defence") (*Chong Hoon Cheong (HC)* at [3]). Based on his contention, he would only be trafficking in a quantity of diamorphine which was below the statutory threshold of 15g and would therefore be guilty of only a non-capital trafficking offence.

7 The Prosecution advanced two alternative cases at the trial. The Prosecution's primary case was that the evidence proved, beyond a reasonable doubt, that the Applicant possessed the drugs in Exhibit D1A2 for the purpose of trafficking. The Prosecution relied on the Applicant's statements to support its primary case (*Chong Hoon Cheong (HC)* at [11]). The Prosecution's alternative case was that the Applicant was presumed to have possessed the diamorphine for the purpose of trafficking under s 17(*c*) of the MDA (because he possessed more than two grammes of diamorphine) and the Applicant could not rebut this statutory presumption (*Chong Hoon Cheong (HC)* at [12]–[13]).

8 The trial Judge rejected the Prosecution's primary case, finding that the purported admissions in the Applicant's statements could not sustain a conviction (*Chong Hoon Cheong (HC)* at [73] and [74]). However, the trial

Judge accepted the Prosecution's alternative case. He found that the Applicant could not establish his Consumption Defence on a balance of probabilities. The Applicant did not mention the Consumption Defence in his earlier statements, could not prove that his rate of drug consumption was proportionate to the amount of diamorphine in Exhibit D1A2 or that he was remunerated in kind by way of drugs for his own consumption in exchange for the work done (see *Chong Hoon Cheong (HC)* at [91], [136], [171], [184]). The presumption of trafficking under s 17(*c*) of the MDA was therefore unrebutted and the Applicant was convicted on the trafficking charge accordingly (*Chong Hoon Cheong (HC)* at [192]–[193]).

The appeal

9 In CCA 28, the Applicant appealed against his conviction and sentence. On 5 July 2022, in a reserved judgment, the Court of Appeal (comprising Sundaresh Menon CJ, Andrew Phang JCA and Judith Prakash JCA) affirmed the trial Judge's finding that the Applicant had failed to prove the Consumption Defence (*Chong Hoon Cheong v Public Prosecutor* [2022] 2 SLR 778 ("*Chong Hoon Cheong (CA)*") at [58]). Accordingly, CCA 28 was dismissed and the Applicant's conviction and sentence were upheld.

Post-appeal

10 The Applicant's first petition for clemency to the President of the Republic of Singapore ("President") was rejected on 19 December 2022. On 22 April 2026, the Applicant presented another petition for clemency to the President. The second petition for clemency was also rejected today.

11 The Applicant, together with various other inmates, was involved in several post-appeal applications before the General Division of the High Court

and in appeals to the Court of Appeal. None of the decisions in those applications and appeals has any bearing on his present application or on the integrity of his conviction and sentence.

The present application

The Applicant's case

12 In his Affidavit and Written Submissions, the Applicant states that the grounds for his application to review CCA 28 are as follows:

> (a) Change of Law in *Muhammad Nabill bin Mohd Fuad* which found that where the Public Prosecutor's failed in its obligation to disclose material evidence *which may be favourable to the accused,* the court may decide that proof beyond reasonable doubt of the offence of drug trafficking has not been made out. In this case, it is submitted that there was a breach of the fundamental rules of natural justice when the police and prosecution failed to disclose evidence and information favourable to the Applicant's case concerning the fact that some of the drugs, (10.93g found in his premises were being repackaged for use by other persons for drug trafficking activities).
>
> (b) Prosecution's failure to disclose that it was party to a breach of confidentiality and litigation privilege and secretly monitoring the Applicant's efforts to prove the lack of candour in disclosing evidence favourable to him at trial and the appeal, contrary to its obligations under *Muhammad Bin Kadar v PP*. These non-disclosures irreparably prejudiced the fairness of the trial in CC 51. CCA 28 did not appear to reflect that there were arguments relating to the breach of natural justice.
>
> (c) New material evidence relating to the unfairness of the process that has come to light for his case which was not available at CCA 28. This includes the fact that the Prosecution failed in its duty of candour to disclose that it was possible to secure the attendance of a Chia Kok Leong also known as "Xiaogui" (little devil in Chinese) who would be able to corroborate the Applicant's defence case that the premises and drugs other than was used for the Applicant's consumption (as well as the drug paraphernalia such as packaging and records) were for storage and belonged to other persons, who were the *de facto* bosses of Eng Kok Seng, the person arrested on 8

> December 2015 at the vicinity of the premises, along Lavender Street and Jalan Besar Road.
>
> (d) This gives rise to an inference that CCA 28 was tainted by a breach of the rules of natural justice, such that the integrity of the judicial process is compromised.

13 The Applicant states further:

> In essence, the Applicant was not given access to all relevant information in order to make an informed choice in deciding whether or not to call material witnesses to his defence. Without access to such information or evidence which the Prosecution is obliged to disclose pursuant to its *Kadar* obligations, the Applicant may further undermine the credibility of his defence. These are matters considered in *Nabill* to impede the fairness of the process, which grants an appellate (and supervisory review) court the power to conclude that the prosecution has not proven the charge of trafficking beyond reasonable doubt.

14 The Applicant alleges that the Prosecution and the police failed to do a proper investigation of what he terms "Material Evidence". This includes the records of how the Applicant's brother was provided with money to pay for the rented premises in which the drugs were found. He alleges that the Prosecution withheld such Material Evidence from him, the non-disclosure of which was the cause of his case being found to be unsubstantiated and insufficient to ground reasonable doubt.

15 The Applicant also complains that there was no joint trial for him and Eng Kok Seng. Such a joint trial would shed light on how he, Eng Kok Seng and Ah Kiat (the alleged boss in the drug transactions) worked together or were otherwise involved in the alleged trafficking, storage and remuneration.

16 The Applicant further alleges that the Prosecution failed to disclose a certain Chong Eng Chai's evidence about how his identity card was used for the rental arrangements for the premises at 26B Hamilton Road. This person appears to be the Applicant's brother who was referred to as Chong Cheong

Chai in an earlier paragraph in the Applicant's Affidavit and Written Submissions.

17 The Applicant claims that all these matters "only came to light in recent attempts by the Applicant's family to locate Ah Kiat's associates, who are Malaysians and not compellable to testify". The Applicant goes on to claim that the lack of investigation or disclosure regarding the storage and safekeeping case distorted his primary defence that the drugs he only intended to possess were solely for his personal consumption and not for trafficking. He should therefore be acquitted on the trafficking charge on the basis that there was reasonable doubt that he was in possession of all 25.01g of heroin for trafficking.

18 The Applicant next claims that he learnt about the matters disclosed in CA 30 (apparently the Court of Appeal's decision in *Syed Suhail bin Syed Zin and others v Attorney-General* [2024] 2 SLR 588) that caused him to be aware that the Prosecution had not been even-handed in its investigations and treatment of his evidence about the storage and safekeeping of the drugs which he had given to the investigating officers. This decision concerned the disclosure of prisoners' correspondence by the Singapore Prison Services to the Attorney-General's Chambers. The Applicant alleges that this "Intrusive Access" was not disclosed to the Court of Appeal in CCA 28. He claims that his letter to the Chief Justice sent after the conclusion of CCA 28 was disclosed to the Prosecution. There was also disclosure of the documents relating to his complaints about ineffective counsel and draft documents pertaining to the present application. These documents were copied and forwarded to one another by the Singapore Prison Services, the Ministry of Home Affairs and the Attorney-General's Chambers. This "Intrusive Access" resulted in a breach of the rules of natural justice.

19 Finally, the Applicant claims that there is new evidence from Chia Kok Leong (see [12] above) which "may show that:

(a) It is not inconsistent that the premises were used for storage and safekeeping of drugs for Ah Kiat as well as allowing the Applicant to maintain his high personal consumption of heroin;

(b) The Applicant's case advanced at trial and appeal is not an afterthought but the truth; and

(c) Is clarifying rather than distorting the truth presented by the Prosecution before the court regarding the state of evidence".

20 The Applicant attaches the signed statement dated 19 April 2026 of the new witness, who calls himself Chai Kok Leong (rather than Chia Kok Leong):

> I, Chai Kok Leong (NRIC No. SXXXXXXXF), hereby state that I am willing to act as a witness for Chong Hoon Cheong (NRIC No. SXXXXXXXB).
>
> I have known Chong Hoon Cheong personally and have visited his residence on multiple occasions to play chess. Each visit would typically last between three to five hours.
>
> During these visits, I did not observe him making any suspicious phone calls or leaving his residence for any unusual purposes. After our chess sessions, we would occasionally go out for meals together before returning to our respective homes.
>
> Based on my personal observations and interactions with him, I have no reason to believe that he is involved in any illegal activities, including drug dealing.
>
> I confirm that the contents of this statement are true and accurate to the best of my knowledge and belief, and I am willing to testify to the same if required.

The Prosecution's case

21 The Prosecution filed its submissions this morning. It first notes that the Applicant has provided no explanation for not making his application earlier although his appeal in CCA 28 was dismissed more than three years ago. It also notes that the Applicant is advancing for the very first time a "Storage and Safekeeping" case.

22 The Applicant did not name Chia Kok Leong as a witness who was relevant to his defence. In the course of one of his statements during investigations, the Applicant identified Chia Kok Leong in a photo board shown to him as Xiao Zi. He did not know the actual name. He also stated that Xiao Zi did not know about the drugs seized from the Applicant's rented room.

23 The Applicant testified at the trial that he met Xiao Zi in a drug rehabilitation centre and knew him for ten to twenty years. They would consume drugs together in the rented room. However, Xiao Zi did not know about the drugs seized from the rented room.

24 The Applicant's evidence during the trial was that he had been renting the room in question from September 2015. He paid a $750 monthly rental. He paid the deposit of $750 and one month of rent before he commenced working for Ah Kiat. He got this money from his mother. The room was rented using his eldest brother's identity card without the brother's knowledge. When he commenced working for Ah Kiat, he was given $2,700 by Ah Kiat to pay for the rental.

25 The Prosecution next lists the post-appeal applications that the Applicant was a party to. It notes that he was not a party in the proceedings

relating to the disclosure of prisoners' correspondence to the Attorney-General's Chambers.

The decision of the Court

26 Before making a review application, an applicant must apply to the appellate court for and obtain permission to do so (s 394H(1) of the CPC). In deciding whether to grant an application for permission to make a review application, the appellate court must consider the matters set out in s 394H(6A) of the CPC.

27 Pursuant to s 394J(2) of the CPC, an applicant in a review application must satisfy the appellate court "there is sufficient material (being evidence or legal arguments) on which the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made". This may be referred to succinctly as the "new evidence" or "new law" requirement.

28 For the material to be "sufficient", all three requirements in s 394J(3) of the CPC must be satisfied:

> (a) before the filing of the application for permission to make the review application, the material has not been canvassed at any stage of the proceedings in the criminal matter in respect of which the earlier decision was made;
>
> (b) the material could not have been adduced in court earlier even with reasonable diligence; and

(c) the material is compelling, in that it is reliable, substantial, powerfully probative and capable of showing almost conclusively that there has been a miscarriage of justice in the criminal matter.

29 Under s 394J(4) of the CPC, where the material relied upon by the applicant consists of legal arguments, such material will only be "sufficient" if it is based on a change in the law that arose from any decision made by a court after the conclusion of all proceedings relating to the criminal matter in respect of which the earlier decision was made. This is in addition to the three requirements set out at [28] above.

30 The grounds of decision in *Kadar* were given on 5 July 2011 and those in *Nabill* were given on 31 March 2020. The evidence in the Applicant's trial concluded on 2 March 2021. It is therefore clear that these two earlier decisions of the Court of Appeal cannot constitute "new law" for the purposes of a review application.

31 The Applicant alleges breaches of the disclosure obligations by the Prosecution but provides no credible evidence to substantiate his allegations or any elaboration on how any alleged suppressed information or lack of investigations affects his defence at the trial. Similarly, the Applicant makes broad allegations about "Intrusive Access" to his confidential or privileged information but does not explain what the information is or how this could impact his conviction and sentence other than stating that the information "would enable the Applicant to apply to review his criminal conviction and sentencing" under the law, particularly the CPC.

32 The Applicant states that the correspondence to the Chief Justice that he alluded to was sent only after CCA 28 had been decided by the Court of Appeal.

It could not therefore have affected the outcome of the appeal. If the letter contained material pertaining to his criminal case, it is the practice of the court to forward such material to all parties involved in the case or to include the material in its reply to the sender (and copied to other parties) as the court does not engage in private correspondence with one party in court proceedings where there are other parties involved.

33 The Applicant does not explain why he could not obtain the testimony of his new witness Chia Kok Leong without the Prosecution's disclosure that it was possible to secure that witness' attendance. He knew about this person and mentioned him in one of his statements given during the investigations and even at the trial. His evidence was that this person was his friend who would consume drugs with him in the rented room but he did not know about the drugs found therein. The Applicant does not explain why he did not or could not call Chia Kok Leong in his defence. This purported new defence witness would therefore not qualify as "new evidence" within the meaning of the review provisions in the CPC.

34 In any case, even if Chia Kok Leong's evidence as encapsulated in his Witness Statement of 19 April 2026 is now considered, it is obvious that it will not aid the Applicant's defence put forward at the trial. Seeing no drugs or drug activities during the three to five hours in the Applicant's rented room on multiple occasions cannot mean that the Applicant was not involved in drugs. The same goes for the occasions when the two men went out for meals together. Chia Kok Leong is also obviously wrong in his impression that the Applicant was not involved in drug dealing because the Applicant did not even dispute that he was trafficking in drugs (other than Exhibit D1A2) and that he also consumed diamorphine and methamphetamine.

35 In so far as the rental of the room at 26B Hamilton Road is concerned, it was not in dispute that the Applicant was the one occupying it and that the drugs found in the room were in his possession and that he knew the nature of the drugs. Therefore, the issues of who the official tenant was and who was supplying money for the rent are not material to his conviction and sentence. As the Court of Appeal in CCA 28 emphasised (at [43] of *Chong Hoon Cheong (CA)*), "the crux" of the appeal was whether the Applicant had established his Consumption Defence pertaining to Exhibit D1A2. There was no suggestion at the trial or the appeal that the Applicant also had a "Storage and Safekeeping" defence and therefore any contention relating to it at this stage cannot possibly have any chance of success.

Conclusion

36 The Applicant has not shown even a remote possibility of miscarriage of justice in the appeal against his conviction and sentence. Accordingly, I dismiss his application summarily, without it being set down for hearing, pursuant to s 394H(7) of the CPC. It follows that there is no reason to stay the execution of his sentence scheduled for tomorrow.

Tay Yong Kwang
Justice of the Court of Appeal

The applicant in person;
Chin Jincheng and Dhiraj G Chainani (Attorney-General's Chambers) for the respondent.