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

[2022] SGHC 287

Criminal Motion No 32 of 2022

Between

Muhammad Feroz Khan bin
Abdul Kader

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Bail]

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Muhammad Feroz Khan bin Abdul Kader
v
Public Prosecutor

[2022] SGHC 287

General Division of the High Court — Criminal Motion No 32 of 2022
Sundaresh Menon CJ
18 August, 22 September 2022

14 November 2022

Sundaresh Menon CJ:

Introduction

1 When a court considers granting bail, it must necessarily balance a myriad of interests and considerations. Perhaps the most common of these is whether the accused person is a "flight risk", or to put it another way, whether there is a chance that he or she will escape from the jurisdiction or otherwise evade detection to avoid participating in further proceedings or investigations. But HC/CM 32/2022 ("CM 32") raised a different consideration: the health and safety of the accused person as a ground for granting bail on the basis that the accused person's medical condition could not adequately be managed by the Singapore Prisons Service ("SPS") while he was held in remand. The applicant in CM 32, Muhammad Feroz Khan bin Abdul Kader ("Feroz"), applied for bail to be extended to him on the basis that he had suffered from recurrent epileptic seizures, and that this condition could not adequately be managed while he was

in remand. After considering his arguments and those of the Prosecution, I dismissed his application. I now give my detailed grounds of decision.

Background

Feroz is arrested and breaches bail conditions

2 Feroz faces a wide range of charges, 61 in total, a large majority of which are under the Road Traffic Act (Cap 276, 2004 Rev Ed) ("RTA") and the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed) ("MVA"). He also faces several charges under the Computer Misuse Act (Cap 50A, 2007 Rev Ed), the Remote Gambling Act 2014 (Act 34 of 2014) and the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"), including three charges under s 376A(1)(*a*) for the sexual penetration of a 14-year-old victim.

3 By the time I heard this application, bail had been extended to Feroz on three separate occasions, but on each of these occasions, he had either subsequently been arrested on fresh charges under the RTA or MVA, or had failed to attend scheduled mentions. As the details of his various arrests were not relevant to the present application, I only set out a brief summary.

(a) On 6 March 2019, Feroz was arrested for his involvement with a syndicate that dealt in de-registered cars. He was released on agency bail of $15,000 on 8 March 2019, with his wife standing as bailor.

(b) On 20 August 2019, he was arrested again after he was involved in a road traffic accident despite (amongst other things) not having a valid driving license. He was released on agency bail of $15,000.

(c) On 18 October 2019, he was stopped by an LTA enforcement officer while he was driving a car. He was arrested upon being found to

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be driving without a valid driving license and without the consent of the car's owner. He was subsequently released on agency bail of $5,000.

(d) On 26 November 2020, Feroz was charged with 31 offences (some of which were the subject of (a) to (c) above). His agency bail was revoked and court bail of $40,000 was offered with his wife standing as bailor. The matter was fixed for a further mention on 29 April 2021, but Feroz did not attend court on that occasion. His bail was revoked and a warrant for his arrest was issued.

(e) After several efforts mounted by law enforcement to trace him, Feroz was arrested more than six months later on 6 November 2021. He was taken to Changi General Hospital for a medical assessment before being taken into remand where he has remained since.

Feroz applies for bail in the State Courts

4 Prior to his arrest, Feroz suffered from various medical conditions, of which his seizures which recurred from time to time were the most notable. Eleven days after his arrest, on 17 November 2021, he suffered a seizure while in remand, but this ended without incident. Several months later, in January 2022, he experienced seizure-related symptoms although no seizures actually developed.

5 Feroz, through his lawyers, applied to the State Courts for bail to be extended to him principally on the basis of his and his family's concern that he "might suffer a seizure in prison and may not receive attention in a timely manner." This application was first heard on 29 April 2022, and on the same day, Feroz's lawyers wrote to SPS, inviting its confirmation that he had suffered "about 5-6 seizures since he was remanded". On 6 May 2022, SPS replied that

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based on their medical records, Feroz had suffered only one seizure on 17 November 2021.

6 On 9 May 2022, Feroz suffered a further seizure while in remand and was admitted to Changi General Hospital. Ten days later, on 19 May 2022, Feroz made further submissions before the State Courts, arguing that SPS's replies regarding his seizures were "riddled with inconsistencies" and had "left [him] and his family questioning [SPS's] ability to manage his health issues properly." Feroz's application for bail was dismissed in the State Courts on 20 May 2022.

The present application

7 Feroz then filed CM 32 on 13 June 2022, moving the High Court to exercise its powers under s 97(1)(*a*) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") and grant him bail. In his affidavit in support, he essentially repeated the grounds he had raised before the State Courts. In reply, the Prosecution maintained that Feroz's medical conditions could be adequately managed in remand and filed supporting affidavits from: (a) the investigating officers involved in Feroz's matter; (b) Faisal bin Mustaffa, the Superintendent in charge of Feroz's cell block ("Superintendent Faisal"); and (c) Dr Noorul Fatha, the chief medical officer of SPS ("Dr Fatha").

8 I first heard the matter on 18 August 2022, when Feroz's counsel, Mr Mohamed Arshad bin Mohamed Tahir ("Mr Arshad"), raised several concerns including: (a) Feroz's medical status, a lack of clarity as to the protocols to be followed in the context of his medical condition, and the extent to which these had been or could be followed by the SPS; and (b) the care arrangements in place for Feroz and whether these were adequate from a

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medical perspective. I did not think these points had been sufficiently addressed in the affidavits filed by the Prosecution, though it has to be said that this was likely because Mr Arshad had not earlier spelt out the nature of his concerns. I accordingly directed that further affidavits from Superintendent Faisal and Dr Fatha be filed addressing these issues.

9 These were duly filed, and on 22 September 2022, the parties came before me again. After hearing further submissions from both parties on the additional information contained in Superintendent Faisal's and Dr Fatha's affidavits, I dismissed CM 32 as I was satisfied that SPS could adequately manage Feroz's medical condition.

Feroz's application for cross-examination

10 Before explaining why I dismissed CM 32, I touch on an application made by Mr Arshad, at the first hearing of this matter, which was for permission to cross-examine Dr Fatha and Superintendent Faisal on various matters arising out of their first affidavits. This was purportedly made under s 283 of the CPC, but it was clear to me that this was the wrong provision: s 283 relates to the recalling of witnesses *within the trial context,* while the matter before me was a criminal motion. This being the case, the real question was when, if ever, cross-examination should be allowed in the course of dealing with a criminal motion. In my view, cross-examination in the course of a criminal motion would only be considered if at all, in the most exceptional of cases because of what is typically their "interlocutory nature".

11 Indeed, our courts have consistently characterised bail orders in particular as "interlocutory and tentative in nature": *Mohamed Razip and others*

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v Public Prosecutor [1987] SLR(R) 525 ("*Mohamed Razip*") at [19]; followed in *Public Prosecutor v Yang Yin* [2015] 2 SLR 78 ("*Yang Yin*").

12 In *Amarjeet Singh v Public Prosecutor* [2021] 4 SLR 841 ("*Amarjeet Singh*") at [28]–[30], I noted that criminal motions are usually invoked in support of a *primary* criminal action. In that regard, they are akin to interlocutory applications in the civil context which are made to move an action forward, or to aid its ultimate resolution. Criminal motions are also like interlocutory applications in that they would typically not finally determine the parties' rights in the proceedings within which the application is being brought: see *Lin Jianwei v Tung Yu-Lien Margaret and another* [2021] 2 SLR 683 at [58]. A typical example common to both contexts is an application to adduce fresh evidence on appeal.

13 Because criminal motions are akin or analogous to interlocutory proceedings, cross-examination will generally not be permitted. In the civil context, this is the established general position. In *Lawson and Harrison v Odhams Press Ld* [1949] 1 KB 129, the court noted that orders for cross-examination in interlocutory applications were generally to be eschewed because otherwise, they may result in a "great deal of delay" and a "multiplication of expense": at 137. In our own jurisprudence, similar observations were made by Judith Prakash JC (as she then was) in the context of a wife's application for interim maintenance pending a divorce hearing. Prakash JC observed that a court "should be slow to allow" cross-examination in interlocutory matters because it would allow parties to rehearse matters before the trial which could be oppressive and she concluded that it would only be in a most "exceptional case" that cross-examination would be allowed in an interlocutory application: *Tan Sock Hian v Eng Liat Kiang* [1995] 1 SLR(R)

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730 at [14]. In my view, these concerns are also applicable in the criminal context.

14 Even where the resolution of a factual point is necessary in order to arrive at a fair disposal of a motion, there may be a myriad of practical solutions available, including calling for further affidavits to explain any issues that require clarification. Indeed, this is precisely what I did in this case. In my judgment, had Mr Arshad spelt out his concerns clearly and transparently at the outset, it would have fallen on the Prosecution to provide the necessary clarification. I have no reason to think it would not have done so in such circumstances. Instead, I had the impression that Mr Arshad embarked on a strategy of directing a series of inquiries, the end point of which was seldom clear, in the hope of exploiting seeming inconsistencies or contradictions. It was only at the first hearing that he then attempted to draw the various threads together to suggest a certain conclusion. Because of the way Mr Arshad had conducted his case, the Prosecution did not, in my view, fully appreciate the thrust of his contentions, and therefore had not adequately addressed some of the issues in its evidence. Mr Arshad's approach was neither helpful nor appropriate especially in an interlocutory context and it necessitated the adjournment of the matter.

The standard under s 97 of the CPC

15 I also touch on one other question of principle as to the applicable standard of review to be applied in CM 32. It should be noted that this was not Feroz's first attempt at obtaining bail in respect of his present incarceration – he had originally applied to the State Courts but failed. The question then was: where the State Courts have refused to extend bail to an accused person, what

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is the standard to be met before the High Court will intervene to grant bail under s 97(1)(*a*) of the CPC?

16 As the grounds Feroz relied on before me were essentially the same as the grounds which he relied on before the State Courts, the Prosecution argued that CM 32 should be dismissed summarily on the basis that he had shown neither "new facts" nor a "material change in circumstances" from the time of his application in the State Courts. It was suggested that there was no basis for the High Court to even consider the matter in such circumstances. This was supposedly supported by some *dicta* in *Mohamed Razip* at [23]. In my judgment, this was not the proper test to be applied in determining CM 32. The need to show "new facts" or a "material change in circumstances" would clearly be appropriate where the application in question is the second one made to the *same court*. This is clear from *Mohamed Razip*, which involved successive bail applications to the *same* court (at [17]):

> 17 The prohibition against alteration or review does not apply to the High Court in any event. Accordingly, *successive applications for bail can be made in the High Court.* But once an application for bail has been rejected, the court would be extremely reluctant in granting bail on subsequent applications, unless there has been a material change of circumstances or new facts have since come to light.
>
> [emphasis added in italics]

17 The Prosecution next contended that where the State Courts have refused bail, the High Court could only be moved if there was an obvious error of law, or serious misapprehension of the facts by the State Courts, citing *Ralph v Public Prosecutor* [1971–1973] SLR(R) 365, which in turn cited *Re Kwan Wah Yip and another* [1954] MLJ 146. I was unwilling to rely on these cases, which were of some vintage, having been decided more than half a century ago in relation to much older versions of the CPC. Furthermore, these cases did not

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consider a provision analogous to s 97 of the CPC, which is the provision invoked in this case.

18 Instead, in my judgment, where an application for bail is made under s 97(1)(*a*) of the CPC to the High Court after bail has been refused by the State Courts, the High Court will act if it is satisfied that the State Courts' decision would give rise to a "serious injustice", which is the standard that must be met for the High Court to exercise its *revisionary jurisdiction*: see for example *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196 at [19], cited in *Xu Yuanchen v Public Prosecutor and another matter* [2021] 4 SLR 719 at [19]–[21].

19 It may be noted that there has been "some uncertainty concerning the nature of the power that allows a higher court to 'alter' bail orders of the magistrate, especially in cases … where the magistrate refuses bail": *Christanto Radius v Public Prosecutor* [2012] 3 SLR 749 ("*Christanto Radius*") at [5]. In *Christanto Radius* it was held that the High Court's power under s 97 of the CPC was a "statutory power of review" (at [6]) but the court did not go further to elaborate on what that power entailed, and what standard had to be met before the power of review would be exercised. In my judgment, the answer to this question depends on ascertaining the nature of the *jurisdiction* that is being exercised by the High Court under s 97 of the CPC.

20 The High Court's criminal jurisdiction "can be considered in terms of its original jurisdiction, its appellate jurisdiction, its revisionary jurisdiction, and arguably in limited circumstances, its supervisory jurisdiction": *Amarjeet Singh* at [14]. As explained in *Amarjeet Singh* at [15]–[19]:

(a) The original jurisdiction is primarily concerned with the High Court's trial jurisdiction, and extends to matters incidental or ancillary thereto;

(b) The appellate jurisdiction is exercised when the court considers appeals arising from "any judgment, sentence or order of a court";

(c) The supervisory jurisdiction refers "to the scrutiny and control exercised by the High Court over decisions of the inferior courts and tribunals or other public bodies discharging public functions"; and

(d) Finally, the revisionary jurisdiction, which has been described as a "statutory *hybrid*" of the appellate and supervisory jurisdictions, enables the court to act to correct a serious injustice arising from an error.

21 It is obvious that when the *High Court* entertains a bail application after the State Courts have refused bail, it cannot be exercising its original jurisdiction. Nor can it be the appellate jurisdiction since bail decisions are interlocutory and not appealable: *Yang Yin* at [11]–[16].

22 Furthermore, an application under s 97(1)(*a*) of the CPC also does not conform to at least two of the characteristics of the supervisory jurisdiction, as set out in *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106 at [46]: first, the remedy under s 97(1)(*a*) of the CPC is not a prerogative writ ordering the State Courts to grant bail – it is simply a grant of bail by the High Court; and second, while the supervisory jurisdiction will usually not touch on the merits of a matter, in exercising its powers under s 97(1)(*a*), the High Court

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is to have reference to the considerations set out in s 95 of the CPC, meaning that it must consider the merits of the bail application.

23 The remaining option is the revisionary jurisdiction, and it is possible that even in the context of a motion in the nature of an interlocutory application such as one for bail, there should be a limited avenue for review in order to avert serious injustice. This view is shared by Tan Yock Lin and S Chandra Mohan, who refer to the High Court's powers under s 97 as being "revisionary" in nature: *Criminal Procedure in Singapore and Malaysia* (Tan Yock Lin & S Chandra Mohan gen eds) (LexisNexis, Looseleaf Ed, 2019) at para 1952.2). Although they do not explain why they take this position, in my view, it is a well-supported one that is completely consistent with the nature and purpose of the High Court's revisionary jurisdiction.

24 The High Court's powers of revision are "designed to enable the correction of miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment": *Public Prosecutor v Li Weiming and others* [2014] 2 SLR 393 at [67], citing Tan Yock Lin, "Appellate, Supervisory and Revisionary Jurisdiction" in ch 7 of *The Singapore Legal System* (Walter Woon ed) (Longman, 1989) at p 234. The consequences arising from bail orders can plainly be serious. The "fundamental basis" for such orders is the presumption of innocence and the need to ensure as far as possible that innocent people do not spend time being incarcerated: *Ewe Pang Kooi v Public Prosecutor* [2015] 2 SLR 672 at [9]. The unjustified deprivation of personal liberty can only be described as a paradigm example of a miscarriage of justice. Thus, the High Court, as the "guardian of criminal justice", should step in and exercise its powers of revision where it seems that there has been a miscarriage of justice by the State Courts in refusing to grant bail to an accused person: see *Yunani*

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bin Abdul Hamid v Public Prosecutor [2008] 3 SLR(R) 383 at [45]. Such a standard, which admittedly sets a high bar, is also appropriate to avoid the mischief of excessive intervention by the High Court in matters that are within the original jurisdiction of the State Courts and where there is no right of appeal.

The merits of CM 32

25 In that light, I turn to my decision on the merits. In my judgment, there was no question of "serious injustice" because Feroz was unable even to show *any* error whatsoever in the State Court's decision to deny him bail. While there was no doubt that he suffered from seizures that recurred from time to time, and had suffered from the associated symptoms on some occasions during his time in remand, I was satisfied at the conclusion of the second hearing of CM 32 that there were no grounds to warrant the grant of bail on account of his medical condition. It should be noted that Feroz was not challenging the denial of bail save on account of the alleged inability of SPS to manage his medical condition. The decision not to contest the bail decision on any other grounds was well-advised for the reasons that follow.

Feroz is at a high risk of absconding

26 In determining a grant of bail, the assessing court will generally endeavour to strike a balance between two broad considerations: the accused person's interest in preserving his or her liberty prior to conviction, and the State's interest in securing his or her attendance during proceedings: *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [53]. In exercising its powers under s 97 of the CPC, the High Court is required also to consider s 95(1), which prescribes situations where bail should *not* be extended. One of these is where there is reason to believe that the accused person will not surrender to custody, be available for investigations, or attend court when

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required: s 95(1)(*b*) of the CPC. In determining whether this is the case, r 5 of the Criminal Procedure Rules 2018 (S 727/2018) ("CPR") provides nine grounds that an assessing court *must* consider. Based on these grounds, it is clear that there is a high risk that Feroz will not surrender to custody, be available for investigations, or attend court.

27 First, he has not shown any respect for the conditions of bail when bail has been extended to him. He has been arrested twice while out on agency bail, and most concerning to me, he absconded for more than six months after the most recent grant of bail: r 5(1)(*h*), (*i*) of the CPR.

28 Second, the charges he faces are significant, in both severity and number: r 5(1)(*e*) of the CPR. To begin with, he faces *61* different charges, with some of the offences being less serious (although large in number), and some being rather more serious. Most strikingly, he faces three charges of sexual penetration of a minor under 16 years old (see [2] above). As the victim was 14 at the time, the maximum sentence that Feroz could face is ten years' imprisonment: s 376A(2) of the Penal Code. The threat of a lengthy imprisonment sentence is a relevant factor in assessing the risk of Feroz avoiding further proceedings under r 5(1)(*f*) of the CPR and it strengthens the concern arising from his hitherto poor record of compliance with his bail conditions.

29 Finally, the evidence against Feroz is strong which again is a relevant factor: r 5(1)(*e*) of the CPR. For example, in relation to the three charges of sexual penetration of a minor, the victim gave birth to a child, and the DNA profiling that was subsequently carried out showed that Feroz was the biological father. Similarly for one charge of theft, there is CCTV footage showing him

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approaching an ATM machine where the victim had left a debit card unattended, and later leaving with a debit card and a stack of cash.

30 In the circumstances, it was unsurprising that at least before me, Feroz did not make any arguments to challenge the finding below that he was a flight risk and instead he relied solely on his medical condition – specifically his recurrent seizures and the alleged inability of SPS to manage this – as grounds for granting him bail.

Feroz's medical condition did not afford grounds for granting bail

31 But a medical condition cannot automatically require the grant of bail. Such conditions can vary greatly in their severity. This wide range precludes the development of any general rules save that it would be exceptional for a medical condition to justify the grant of bail where the denial of bail is otherwise found to be appropriate on account of a real and substantial flight risk. Minimally, the accused person would have to show that the SPS was not able to manage his medical condition with a reasonable degree of safety.

32 It would be prudent for an applicant making such an argument to support it with medical evidence that documents the severity of the medical condition in question, details the recommended care arrangements, and sets out the ways or aspects in which concerns are harboured as to the ability of the SPS to manage the condition in question.

33 Feroz did adduce evidence showing that the seizures could have serious consequences. This took the form of medical reports that showed he had suffered seizures that resulted in injuries such as a forehead laceration that required 16 stitches, though none of these incidents happened in remand.

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34 While in remand, Feroz suffered two seizures: one on 17 November 2021, and one on 9 May 2022. Both of these ended without medical intervention, and Feroz was taken to Changi General Hospital thereafter. In respect of the first incident on 17 November 2021, Feroz was diagnosed with having suffered a "breakthrough seizure", meaning a seizure that took place despite the prophylactic medication that he had been prescribed. After this incident, Feroz had his dosage of such medication increased. After the second incident on 9 May 2022, which involved another breakthrough seizure, tests were conducted and nothing adverse was detected.

35 While the seizures suffered by Feroz in remand did not result in any serious injury, Mr Arshad drew my attention to a patient discharge summary dated 8 November 2021 which was produced after Feroz had undergone a medical check-up on 6 November 2021 following his arrest. In particular, he pointed to a single line in this summary which read:

> "Phone consulted NEM SGH: suggest for *CT brain* and to follow *status epilepticus* protocol in the event of breakthrough seizure"
>
> [emphasis added in italics]

36 In Dr Fatha's first affidavit, there was no elaboration either as to whether Feroz had gone for the suggested brain scan, or as to what "status epilepticus" was and what protocol should be followed to treat it. Mr Arshad pointed to some publicly available information that defined "status epilepticus" as a "neurological emergency requiring immediate evaluation and management to prevent significant morbidity or mortality". This raised some questions as to the severity of Feroz's condition, but when asked about this, the Prosecution was unable to provide an explanation and I therefore directed that a further affidavit be produced from Dr Fatha addressing this.

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37 The Prosecution duly filed Dr Fatha's second affidavit, in which it was stated that "status epilepticus" is "a seizure with five minutes or more of continuous clinical and/or electrographic activity" or "recurrent seizure activity without recovery between seizures". Dr Fatha also clarified that the line in the 8 November 2021 discharge summary was not a diagnosis that Feroz was suffering from "status epilepticus". Rather, it reflected that the doctor who examined Feroz on 6 November 2021 had sought advice from a neurology consultant because of Feroz's history of recurrent seizures. The consultant "gave general advice regarding seizure management", recommending "investigations like CT brain scan[s]" as well as management protocols "as per general guidelines for status epilepticus". Thus, what that report suggested was the steps to be followed *if* Feroz developed status epilepticus and not that he *had* in fact developed it.

38 While Feroz had a serious medical condition, as I have already noted above, it was especially relevant to inquire into whether the SPS could *adequately manage* it. Feroz raised two aspects of SPS's ability to manage his condition. The first was whether SPS could provide sufficient care to him in the event that he did suffer a seizure. As to this, Dr Fatha explained the medical processes that were in place while Superintendent Faisal explained the ability of the SPS officers to act as first responders, their training in first aid and Feroz's rooming arrangements to address these concerns. Dr Fatha also confirmed that the first aid training of the SPS officers would enable them to carry out the first few steps in managing a seizure.

39 In the light of these explanations, Mr Arshad confirmed that he no longer harboured the concerns he had raised over SPS's ability to provide care for Feroz in the event of a seizure. But he maintained some reservations over the

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ability of SPS to *detect* the onset of a seizure. In reply, the Prosecution pointed to a number of measures that addressed this.

40 I agreed with the Prosecution that there were adequate measures in place that would reasonably enable SPS to detect the onset of any seizure that Feroz may suffer. The majority of these measures were deposed to by Superintendent Faisal who explained that there is a CCTV camera installed in Feroz's cell which is operational every hour of every day, and that it is monitored by an SPS officer. The Prosecution also indicated that there would be hourly checks conducted on Feroz because he was on SPS's watch list on account of his medical condition. Finally, Feroz, or the two inmates with whom he shared his cell with, could use an intercom installed in the cell to alert officers if a seizure began to occur.

41 In addition, the Prosecution further noted that Feroz would typically experience symptoms that preceded the onset of a seizure which would allow him to alert officers who could then provide the necessary care. Indeed, this had happened on 5 January 2022 when Feroz had reported to officers that he was experiencing such symptoms, and he was subsequently brought to the medical centre, and then Changi General Hospital.

42 In the circumstances, I was satisfied that SPS could detect the onset of any seizures and respond promptly and more generally, that it could manage Feroz's medical condition.

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Conclusion

43 I therefore dismissed CM 32.

Sundaresh Menon
Chief Justice

Mohamed Arshad bin Mohamed Tahir and Patrick Fernandez (Fernandez LLC) for the applicant;
Grace Lim, Chong Yong and Teo Siu Ming (Attorney-General's Chambers) for the respondent.

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