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

[2023] SGHC 182

Criminal Case No 12 of 2023

Between

Public Prosecutor

And

Affandi bin Mohamed Hassan

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Misuse of Drugs Act]

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v
Affandi bin Mohamed Hassan

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See Kee Oon J:

1 The accused claimed trial to a charge under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for having in his possession a controlled drug for the purpose of trafficking. The quantity of controlled drugs in question was 2,752.64g of granular/powdery substance which was analysed and found to contain not less than 24.64g of diamorphine, also known by its street name of heroin. This was made up of three sets of drugs, which I will refer to as the "A", "B" and "D" drugs, which were recovered from Block 305 Serangoon Avenue 2, #04-88, Singapore ("the flat") where the accused resided until his arrest.

2 At the conclusion of the trial, I was satisfied that the Prosecution had proven the charge beyond a reasonable doubt. Upon delivering brief oral grounds for my decision to find him guilty, the accused was convicted and sentenced to the mandatory death sentence. I now set out the grounds of my

decision in full, incorporating my oral grounds and elaborating upon them where necessary.

Agreed and undisputed facts

3 A 51-page Statement of Agreed Facts ("SOAF") was tendered pursuant to s 267(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") at the commencement of the trial. There was substantial agreement on the evidence adduced by the Prosecution. I shall proceed to summarise the material points from the SOAF alongside the undisputed facts from the evidence adduced at trial, with reference also to material contained in the Agreed Bundle ("AB").

4 The accused was arrested at the flat on 10 December 2020 by officers from the Central Narcotics Bureau ("CNB"), who were acting on information that was received pertaining to drug activities. The accused was residing at the flat at the material time. The flat belonged to a brother of his friend, one "Talib", who stayed there with his Filipino wife.[1]

5 The accused was previously convicted for various offences including drug offences. He was released from prison in 2018 after serving his sentence under the LT-2 regime as a repeat offender for the offence of drug consumption. After his release from prison, the accused worked as a laundry operator until mid-2019. Between then and the time of his arrest, he remained unemployed.[2]

6 All the drugs forming the subject-matter of the charge were recovered from within the flat from different locations. The accused was in possession of

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1 Agreed Bundle ("AB") at p 327 at A2 and A4; AB480 at para 2.

2 AB480 at paras 3–4.

all the drugs, and he knew that the drugs contained diamorphine.[3] The "A" drugs were repackaged by him and meant to be sold to other persons.[4] The chain of custody of the drugs and the DNA analysis conducted by the Health Sciences Authority ("HSA") were not disputed.

7 The salient details pertaining to the "A", "B" and "D" drugs were as follows:[5]

(a) The "A" drugs comprised 61 packets of diamorphine which were seized from under the bed in the bedroom beside the kitchen (the "Bedroom"). The HSA analysis of the "A" drugs determined that they contained not less than 6.96g of diamorphine in total. [Note: there is a typographical error in the Prosecution's Opening Statement at para 12, S/N 2 for the exhibit marked A1A1B1A – the HSA analysis result should reflect "not less than 1.33g" and not "not less than 1.25g". This is verifiable from the HSA certificate issued in respect of A1A1B1A.[6]]

(b) The "B" drugs comprised four packets and two straws of diamorphine which were found in a box seized from the bedside table in the Bedroom. The Health Sciences Authority ("HSA") analysis of the "B" drugs determined that they contained not less than 0.24g of diamorphine in total.[7]

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3 SOAF at para 61; Defence's Skeletal Closing Submissions ("DSCS") at para 3i.

4 DSCS at paras 3ii and 17g.

5 SOAF at para 60.

6 AB172. See also SOAF at para 60.

7 AB192–195 and 210.

(c) The "D" drugs comprised three bundles wrapped in black tape which were seized from the dining table in the living room.[8] One bundle marked as "D1A" contained two packets of diamorphine which were in turn marked as "D1A1A" and "D1A2A" respectively. The second bundle was marked as "D1B", containing two packets of diamorphine which were in turn marked as "D1B1A" and "D1B2A" respectively. The third bundle was marked as "D1C1", containing one packet of diamorphine which was marked as "D1C1A1". The Health Sciences Authority ("HSA") analysis of the "D" drugs determined that they contained not less than 17.44g of diamorphine in total.[9]

8 There were other drugs found in the flat but these were not the subject matter of the charge. These were referred to at the trial as the "C" and "E" drugs. Various items related to drug consumption such as glass utensils, improvised smoking utensils, lighters, aluminium foil, cotton buds, stained spoons, syringes and straws were seized. In addition, drug trafficking-related paraphernalia including empty plastic packets, digital weighing scales and masking tape were seized.[10]

9 The accused's DNA was found on numerous seized exhibits related to the "A", "B" and "D" drugs.[11] However, in relation to the "D" drugs, his DNA was not detected on either the exterior of the three black-taped bundles D1A, D1B and D1C1 or on their interior.[12] Two of these black-taped bundles

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8 SOAF at para 23.

9 SOAF at p 35.

10 SOAF at paras 7–9.

11 SOAF at para 70.

12 SOAF at para 70.

contained two "stones" of diamorphine, and one bundle contained only one "stone", with a total of five "stones" in the three bundles.[13]

10 Two of the accused's urine samples were submitted for HSA analysis. Both certificates stated that the accused's urine contained 11-Nor-delta-9-tetrahydrocannabinol-9-carboxylic acid, methamphetamine and monoacetylmorphine. Monoacetylmorphine is a known metabolite of diamorphine. 11-Nor-delta-9-tetrahydrocannabinol-9-carboxylic acid is a known metabolite of cannabis.[14]

11 Apart from medical reports pertaining to medical examinations on the accused which were unexceptional, the AB included a psychiatric assessment report dated 8 January 2021 on the accused prepared by Dr Derrick Yeo Chen Kuan ("Dr Derrick Yeo") from the Institute of Mental Health ("IMH") ("the IMH Report").[15] In the IMH Report, Dr Yeo confirmed that the accused was likely to be suffering from opiate (diamorphine) use disorder at the time of the alleged offence.[16] He did not meet the criteria for intellectual disability and was not of unsound mind at and around the material time of the alleged offence. He was therefore fit to plead in a court of law.[17]

12 POLCAM (Police Camera) footage files were obtained from the ground floor of lift lobby "B" of Block 305 Serangoon Avenue 2 ("Block 305") and the

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13 SOAF at pp 14–15.

14 SOAF at paras 87–88.

15 AB236–241.

16 AB240.

17 SOAF at paras 94–95.

stairwell between the ground floor of lift lobby "B" and the second floor of Block 305 for the following dates and timings:

(a) 7 December 2020 (10.45pm to 10.50pm);

(b) 8 December 2020 (4.41am to 4.46am); and

(c) 10 December 2020 (12.10pm to 12.30pm; 1.22pm to 1.27pm; 2.21pm to 2.31pm).[18]

13 POLCAM footage for 9 December 2020 (10.30pm to 11.59pm) was also obtained. It did not show the accused at the lift lobby.[19]

14 A contemporaneous statement[20] was recorded by Station Inspector Mohamed Fadli Bin Mohamed Sayee ("SI Fadli") shortly after the accused was arrested on 10 December 2020. As stated in the SOAF, all the statements recorded from the accused, comprising the contemporaneous statement, several cautioned statements, as well as seven investigative statements recorded under s 22 of the CPC (the "1st, 2nd, 3rd, 4th, 5th, 6th and 7th long statements" respectively) were given voluntarily, without threat, inducement or promise.[21] They were recorded accurately based on what the accused told the statement recorders.[22] The accused confirmed this upon cross-examination and did not challenge the admissibility of all the statements. Accordingly, the statements were admitted in evidence.

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18 SOAF at para 96.

19 AB472–473, paras 98 and 100.

20 AB327–332 (Exhibit P44).

21 SOAF at para 99.

22 SOAF at para 99.

The case for the Prosecution

15 The accused did not dispute that he intended to traffic in the "A" and "D" drugs. The Prosecution's case was that the accused intended to traffic in the "B" drugs as well, contrary to the accused's claim that these were for his own consumption. In respect of the "D" drugs, the Prosecution's case was that the accused was not a mere courier.

16 The Prosecution highlighted that the accused had given inconsistent accounts in his investigative statements regarding various material issues.[23] These included different accounts relating to the ownership of the "B" drugs.[24] More pertinently, in relation to the "D" drugs, he gave inconsistent accounts of how he came to receive them from one "Bob", and whether he would be paid $500 by "Ah Kwang" for receiving them or was merely doing a favour for one "Salim Babu" (also known as Mohamad Salim Bawany ("Salim")) with no expectation of payment.[25]

17 The Prosecution further argued that the accused also gave inconsistent accounts in respect of several matters, which were as follows. To begin with, as regards the alleged recipients of the "D" drugs, the accused gave differing accounts involving one "Aboy Tamling" (also known as "Hassan Pekboon" ("Pekboon")), Salim and himself. He initially claimed that one black bundle was meant for "Pekboon" and the other two were for Salim. He subsequently claimed that at least three "stones" of diamorphine were for "Pekboon" (*ie*, at least two black bundles), while at least one of the remaining two "stones" might

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23 Prosecution's Closing Submissions ("PCS") at para 12.

24 PCS at para 13.

25 PCS at para 14; AB at p 513, para 44.

be given to "Pekboon" and the last "stone" would potentially be split equally between Salim and himself.[26]

18 The accused further claimed that Salim and "Pekboon" would be paying him $11,100 and $7,400 respectively for the "D" drugs. He subsequently alleged that he was not expecting any payment from them.[27]

19 The accused had claimed in both his contemporaneous and long statements that he had been contacted by "Ah Kwang" on a Malaysian telephone line on 9 December 2020 at about 11pm about the arrangements to collect the drugs. However, the call records for the accused's mobile phone showed that he had not received phone calls from any Malaysian number anytime between 8 to 10 December 2020.[28] The accused had also claimed that Salim called him about the drugs on 8 or 9 December 2020 but once again the relevant call records for his mobile phone did not reveal any calls from Salim's mobile phone number.[29]

20 In his 1st long statement, the accused further claimed that he had gone down to the void deck of Block 305 on 9 December 2020 to collect the "D" drugs from Bob.[30] However, the POLCAM footage reviewed by Inspector Tan Leong Poh ("IO Desmond") showed that the accused did not take the lift nor the stairs down to the ground level of Block 305 from between 9 December 2020 at 10.30pm to 10 December 2020 at 1.59am.[31]

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26 PCS at para 15(a).

27 PCS at para 15(b).

28 PCS at para 16.

29 AB243–277.

30 AB481 at para 7.

31 PCS at para 17.

21 In view of the accused's claims at trial that Salim was involved in the "D" drug order with "Ah Kwang", was one of the intended recipients of the "D" drugs, and would be paying him $11,100, the Prosecution called Salim as a rebuttal witness. Salim was serving his sentence of four years' imprisonment on charges of drug possession and consumption. He was originally charged for abetting the accused with drug trafficking but subsequently given a discharge not amounting to an acquittal.

22 Salim testified that he had purchased drugs from the accused before but did not order any drugs from "Ah Kwang" or the accused and was not expecting any drugs from them in connection with the present case. He could not remember calling the accused or speaking to him two days prior to the accused's arrest on 10 December 2020. He did not recognise any of the "D" drugs.[32] These aspects of Salim's evidence were unchallenged by the accused during Salim's cross-examination.[33]

The case for the Defence

23 From what emerged during the trial, the defence was premised on two main contentions: first, that the "B" drugs were solely for the accused's own consumption; and second, that he was only a courier in relation to the "D" drugs. He had agreed to work for "Ah Kwang" in return for payment of $500, to take delivery of the "D" drugs on "Ah Kwang"'s instructions and to hold on to them before passing them to Salim and "Pekboon".

24 In his 1st long statement, the accused claimed that on 9 December 2020, "Ah Kwang" called him to tell him that two "stones" of diamorphine would be

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32 Notes of Evidence ("NE") dated 29 March 2023 at pp 6–7.

33 PCS at para 61.

delivered later that day.[34] However, in his 5th long statement, he claimed that Salim had called him first on 8 December 2020 to inform him that "Ah Kwang" would deliver two "stones" of diamorphine to him on 9 December 2020.[35] Sometime after 11pm on 9 December 2020, the accused received a call from "Bob" about the drug collection arrangements. The accused proceeded to the void deck below Block 305 and collected the "D" drugs from "Bob". According to him, "Bob" was a male Malay who drove a white Mazda car.[36]

25 The accused further claimed that upon returning to the flat, he was surprised to find that there were five "stones" of diamorphine instead of two. "Ah Kwang" then contacted him and told him that three "stones" were for "Pekboon" and the accused should call Salim regarding the delivery arrangement to "Pekboon". The accused discussed the matter with Salim, and they agreed that "Pekboon" could take the remaining two "stones" of diamorphine if he wished (*ie*, all five "stones"). Alternatively, Salim and the accused would split one "stone" between themselves, leaving four "stones" for "Pekboon".[37]

26 The accused maintained that the "D" drugs did not belong to him but were delivered to him by "Bob". According to the accused, he had taken a consistent stand that he was a courier in relation to the "D" drugs which he was holding on to, intending to pass them to Salim and "Pekboon".[38]

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34 AB481, para 7.

35 AB513, para 44.

36 AB481, para 7.

37 AB482, para 9.

38 DSCS at para 22.

The Prosecution's submissions

27 In view of the accused's statements and his oral testimony at the trial, the Prosecution's Closing Submissions ("PCS") focused primarily on: (a) the "B" drugs, insofar as the accused had denied intending to traffic in them; and (b) whether he was only a courier in relation to the "D" drugs.

The "B" drugs

28 In respect of the "B" drugs, the Prosecution pointed first to the inconsistencies in the accused's accounts both at trial and in his 4th long statement as to ownership and possession of the "B" drugs.[39] Although the issue of possession was ultimately conceded by the accused at trial, the Prosecution submitted that the accused's lies undermined his credibility and his subsequent claim that the "B" drugs were only meant for consumption.[40]

29 The accused only conceded that he did possess the "B" drugs after being confronted under cross-examination with objective evidence from the HSA Forensic Chemistry and Physics Laboratory Report (the "FCPL Report")[41] linking some of the plastic packets in the "B" drug exhibits to other plastic packets in the "A" and "E" drug exhibits. The FCPL Report showed that these plastic packets were batch-manufactured consecutively. The Prosecution therefore submitted that the inexorable inference was that the accused had similarly packed the "B" drugs.[42]

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39 AB509, para 37, Exhibit P152; PCS at para 32.

40 PCS at para 31.

41 AB94–127.

42 PCS at paras 31 and 36.

30 When cross-examined and asked to explain why he had lied about possession of the "B" drugs, the accused admitted that he had no valid explanation. He also admitted that he had no valid reason for failing to inform the recording officer that he had intended to consume the "B" drugs, when he had done so for the "C" drugs in the same statement. Accordingly, the Prosecution submitted that the only inference that could be drawn was that the accused had deliberately lied about the "B" drugs as they were meant for trafficking and not consumption.[43]

31 As for the presence of utensils for drug consumption which were found in the same box containing the "B" drugs, the Prosecution contended that they did not support the accused's claim that the "B" drugs were for consumption. The accused had admitted that these utensils were for the consumption of methamphetamine and not diamorphine. Moreover, the four packets of diamorphine marked as B1A1 were packed in the same manner using the same plastic packets as the "A" drugs, which were meant for sale.[44]

The "D" drugs

32 As for the "D" drugs, the Prosecution's case was that the accused had failed to discharge his burden under s 33B(2) of the MDA to prove on a balance of probabilities that he was a courier, applying the legal principles laid down by the Court of Appeal in *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 (at [109]).[45]

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43 PCS at para 32.

44 PCS at para 33.

45 PCS at para 23.

33 Essentially, the Prosecution contended that the accused's "courier" defence was a bare allegation and should thus be rejected. Moreover, the Prosecution argued that the accused's numerous lies which were evident from his inconsistent evidence not only damaged his credibility but corroborated his guilt, in line with the Court of Appeal's observations in *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 ("*Chukwudi*") (at [60] and [62]).[46] In view of the inconsistencies and lies in the accused's account regarding his receipt and intended delivery of the "D" drugs, and his undisputed status as a drug trafficker who would repack and sell the "A" drugs, the Prosecution submitted that inexorable inference was that he similarly intended to repack and sell the "D" drugs.[47]

34 The Prosecution urged the court to reject the accused's claim that he collected the "D" drugs from "Bob" on the instructions of "Ah Kwang" as this was contradicted by objective evidence and was internally inconsistent.[48] When asked to explain the multiple inconsistencies and discrepancies in his evidence, the accused was unable to offer any explanation. When pressed, he resorted to claiming that he was confused or could not remember.[49]

35 The accused admitted under cross-examination that he had deliberately lied about when and where he collected the "D" drugs, and about any expected payment for the "D" drugs. He admitted to lying because he did not want the CNB to know where, when and from whom he had collected the "D" drugs. As such, the Prosecution argued that the only plausible motive for him to lie on

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46 PCS at para 27.

47 PCS at para 37.

48 PCS at para 38.

49 PCS at para 40.

these material issues was because he was fearful that the CNB would trace his drug supplier, who would then confirm that the "D" drugs were meant entirely for him only and not for onward delivery to others.[50]

36 As for the accused's claims about the intended recipients to whom he would deliver the "D" drugs, he had fabricated claims that Salim and/or "Pekboon" were the intended recipients. In this regard, the Prosecution took the position that he did so in order to mask the fact that all the "D" drugs were meant for his own trafficking.[51]

37 The accused also admitted under cross-examination that he had falsely implicated Salim. This corroborated Salim's unchallenged testimony denying any involvement with the "D" drugs. As for "Pekboon", the accused admitted to having lied about his contact details, the amount of diamorphine to be handed over to "Pekboon" and how much money would be collected from "Pekboon". On this point, the Prosecution averred that the accused's admitted lies about both Salim and "Pekboon"'s involvement were deliberate and related to the material issue of the intended recipient(s) of the "D" drugs, and that the sole explanation for these lies was that the "D" drugs were meant solely for the accused himself to traffic.[52]

38 The Prosecution therefore submitted that the accused was unable to satisfactorily show that he was only a courier in respect of the "D" drugs.

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50 PCS at paras 48–49.

51 PCS at para 50.

52 PCS at paras 51–62.

The Defence's submissions

The "B" drugs

39 The accused maintained that the "B" drugs were for his own consumption and not for sale to other persons. He pointed out that there were drug consumption utensils including a lighter, cotton buds and improvised smoking implements found together with the "B" drugs.[53] These utensils had signs of usage for consumption purposes, suggesting that part of the "B" drugs had already been consumed. In addition, the "B" drugs were found beside the bed in the Bedroom where the accused would sleep when no one else was at home.[54]

40 It was further submitted that if the "C" and "E" drugs were meant for his own consumption, then all the more the "B" drugs were also for his personal consumption given that the utensils bore obvious signs of use for consumption.[55] Even if he was found to be untruthful in his long statement where he had denied knowledge of the "B" drugs, that did not prevent a finding that he was intending to consume them. [56]

The "D" drugs

41 The accused submitted that he had been consistent in his position that he was a courier in respect of the "D" drugs, which he had received from "Bob". According to his account, he was holding on to them and intending to pass them to "Pekboon" and Salim. In this regard, he relied on the fact that the "D" drugs

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53 DSCS at para 18.

54 DSCS at para 18.

55 DSCS at para 20.

56 DSCS at paras 20–21.

had not been repacked and interfered with, and that his DNA was not found in the interior of the three black-taped bundles containing the "D" drugs.[57]

42 The accused also submitted that even if his evidence relating to Salim were disbelieved, this did not prevent a finding that he was a courier in respect of the "D" drugs. The accused argued that Salim's evidence was an attempt to preserve his own self-interest since he was given a discharge not amounting to an acquittal on a capital charge of abetting the accused to traffic in drugs. It was submitted that he would not prejudice himself by admitting that he was involved in the supply of drugs. It was further argued that Salim's evidence lent itself to a strong inference that he was involved in drug trafficking given that he was jobless but spending up to $700 a week staying in hotels and consuming drugs almost daily since 2017.[58]

43 In addition, Salim confirmed that the persons known as "Ah Kwang" and "Pekboon" did actually exist (though he clarified that he knew "Pekboon" as "Peh Hoon" instead). He had met "Ah Kwang" in prison. The accused argued that this meant that the accused was telling the truth in his investigation statements and on the witness stand. In other words, the accused's position was that he had proven on a balance of probabilities that he was merely a courier taking instructions from "Ah Kwang" and had intended to sell drugs to "Pekboon". On this point, Salim had also admitted in his long statement (Exhibit D2) that he had called the accused on 8 December 2020, and the accused said that this admission was consistent with the accused's account.[59]

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57 DSCS at paras 22–23.

58 DSCS at para 25i–25ii.

59 DSCS at para 25iii–25iv.

Issues for determination

44 There were two main issues for determination, namely:

(a) whether the Prosecution had proven that the "B" drugs were intended for the purpose of trafficking; and

(b) whether the accused had proven on the balance of probabilities that he was only a courier in relation to the "D" drugs.

My decision

45 As a preliminary observation, although the Prosecution had stated in its Opening Statement that it would rely on the presumption of trafficking under s 17(*c*) of the MDA,[60] the issue of how the presumption would operate was not specifically addressed in the PCS. It was not clear if this was an inadvertent or intentional omission. In coming to my decision at the end of the trial, I assumed that the Prosecution had revised its position and did not intend to rely on the presumption, since the thrust of the PCS was directed at how the accused had not raised any reasonable doubt.

46 The presumption was nevertheless operative on the facts and had the Prosecution expressly submitted that it would be relying on it, this would have placed the burden on the accused to show on the balance of probabilities that he did not intend to traffic in all the drugs. Be that as it may, having reviewed the evidence and the submissions, I was satisfied that the accused had not raised any reasonable doubt that the "A", "B" and "D" drugs were intended for the purpose of trafficking. It would necessarily follow that the accused would not

60 Prosecution's Opening Statement para 4(c).

have rebutted the presumption under s 17 on the balance of probabilities in any event.

Were the "B" drugs intended for the purpose of trafficking?

47 Turning first to the "B" drugs, the accused's primary contention was that they were all meant for his own consumption. However, his evidence in relation to ownership, possession and the intended purpose of the "B" drugs was markedly inconsistent and unreliable.

48 Beginning with his contemporaneous statement, the accused had admitted that the "B" drugs belonged to him.[61] He changed his position in his 4th long statement where he denied that they belonged to him and that he did not know who they belonged to.[62] In his oral testimony at trial, he claimed that he did not know who packed the items in the box containing the "B" drugs.[63] When asked to clarify, he stated again that these drugs did not belong to him.[64] This was highly dubious given that possession of the "B" drugs was an agreed fact in the SOAF. In the Defence's Skeletal Closing Submissions ("DSCS"), it was accepted that he was in possession of the "B" drugs.[65] He did not assert at any point that he was a courier in relation to the "B" drugs.

49 In my assessment, the accused had clearly lied in his oral testimony and in his 4th long statement when he disavowed ownership and possession of the "B" drugs. This was not only evident from his responses under cross-

61 AB328 at A7.

62 AB509 at para 37.

63 NE, 28 March 2023, p 52 ln 16–17.

64 NE, 28 March 2023, p 60 ln 4–7.

65 DSCS at para 3i.

examination but from his own counsel's acceptance in the SOAF and in the DSCS that possession of the "B" drugs was undisputed. Despite his claims of being "confused", the accused himself eventually conceded that he had no explanation for denying possession of the "B" exhibits.[66] This concession only came about after he was confronted with the findings in the FCPL Report, showing that some of the plastic packets among the "B" drug exhibits were linked to the plastic packets among the "A" and "E" drug exhibits. In particular, some of the plastic packets were batch-manufactured consecutively, showing that the accused had packed the "B" drugs together with the "A" and "E" drugs. Accordingly, I was of the view that the accused owned and possessed the "B" drugs.

50 Further, I found that the accused intended to traffic in the "B" drugs. In this regard, both the "A" and "B" drugs were found in the Bedroom, respectively below and beside the bed where it was undisputed that the accused slept.[67] The "B" drugs were packed in the same manner and using the same plastic packets as the "A" drugs, the latter which the accused admitted were meant for sale. In the absence of any other credible explanation from the accused, this strongly indicated that the accused had also packed the "B" drug exhibits for the purpose of sale. The accused further conceded that he had no reason for failing to inform the recording officer of the 4th long statement that the "B" drugs were solely for his own consumption, when he had readily done so for the "C" drugs.[68] He could easily have made a similar claim for the "B" drugs if it was indeed true that they were intended purely for personal consumption. The fact that he did not do so spoke volumes. This strongly suggested that they were not so intended.

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66 NE, 28 March 2023, p 61 ln 16–18.

67 AB496–497.

68 NE, 28 March 2023, p 62 ln 1–4.

51 The mere fact that the "B" drugs were found together with drug consumption utensils such as a lighter, cotton buds and improvised smoking implements was not sufficient to raise a reasonable doubt that the "B" drugs were intended solely for his own consumption. In any case, the accused had admitted that these utensils were only for methamphetamine consumption.[69] As such, while there may have been obvious signs of usage of the utensils for drug consumption, this was of no assistance to him as well since the "B" drugs were not methamphetamine but diamorphine. The fact that the drug utensils were found in the same blue basket "B1" as the "B" drugs did not give rise to a strong inference that the "B" drugs must have been intended for his own consumption. The accused himself did not suggest at any time that he had a habit or practice of keeping all the items intended for his personal use in the same blue basket "B1" where all the "B" exhibits were found.[70]

52 I did consider the possibility that the accused could have kept aside some drugs including the "B" drugs for his own consumption, since it was undisputed that he had been abusing drugs. Moreover, the "B" drugs only concerned a small quantity comprising four packets and two straws of diamorphine. Nevertheless, the consumption defence was an obvious afterthought as it was never raised by the accused until he testified at trial. In his 4th long statement, he had flatly denied possession and ownership of the "B" drugs altogether, despite having initially acknowledged in his contemporaneous statement that the "B" drugs belonged to him. However, possession of the "B" drugs was an agreed fact in the SOAF. The only logical inference from this was that his instructions to counsel must have changed just prior to trial. At trial, he changed his position once again and reverted to his denial of being in possession, only to recant after

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69 NE, 28 March 2023, p 82 ln 15–25.

70 AB510.

being confronted with objective evidence in the FCPL Report. He must have realised that he had no other option but to concede his possession of the "B" drugs if his belatedly raised defence of consumption was to even have a leg to stand on.

53 In summary, the accused had sought to raise different claims at different points in time where the "B" drugs were concerned. He gave no explanations for why he kept changing his position, in particular why he did not mention his defence of consumption until he gave his defence at trial. I found that the accused, as an undisputed trafficker of the "A" and "D" drugs, had not offered any shred of evidence which would raise a reasonable doubt that the "B" drugs were in his possession for the same purpose of trafficking. I found that he must have repacked the "B" drugs in a similar fashion to the "A" drugs for the purpose of sale.

Was the accused a courier in respect of the "D" drugs?

54 Where the "D" drugs were concerned, there was a litany of material inconsistencies or flaws in the accused's claims in his defence. I shall outline a broad selection of these as follows.

"Ah Kwang"'s alleged involvement and instructions on the "D" drugs

55 The accused claimed in his contemporaneous statement that he worked for "Ah Kwang" and followed his instructions, and would be paid $500 by "Ah Kwang" for collecting the "D" drugs.[71] In his 1st long statement, the accused said that he was acting on "Ah Kwang"'s instructions to collect two

[71] AB331 at A26–A28.

"stones" which were meant for Salim and the accused himself.[72] In his 2nd long statement, he said that "Ah Kwang" told him that as there were five "stones", three of the "stones" were for "Pekboon"[73] In his 5th long statement, the accused changed his evidence again and suggested that Salim had contacted him first to inform him about "Ah Kwang" arranging for delivery of two "stones" of diamorphine, which were meant for "Pekboon".[74] He said in his 5th long statement that he was only doing Salim a favour and was not being paid for doing so.[75]

56 The accused then contradicted his initial claims when he stated in his 6th long statement dated 19 December 2020 that he did not work for "Ah Kwang" and did not know who "Ah Kwang" was. He also claimed that he was not expecting payment from "Ah Kwang".[76] As recorded in the IMH Report, he reportedly informed Dr Derrick Yeo that he would not be paid but was just helping "Ah Kwang" to collect the four "blocks" of diamorphine (not three black bundles or five "stones") found in his possession. He further reportedly claimed that "Ah Kwang" had reassured him that the drugs were "paid for already" and that two "blocks" were for Salim and the other two for "Pekboon".[77]

57 During the trial, the accused claimed that there was no discussion about payment with "Ah Kwang" during their phone call on 9 December 2020 but

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72 AB481 at para 7.

73 AB482 at para 9.

74 AB513 at para 44.

75 AB513 at para 45.

76 AB530 at para 64.

77 AB239 at para 9.

nevertheless reverted to his initial claim that "Ah Kwang" had promised to pay him $500 to "hold the item(s) for him".[78] He explained that when he realised there were five "stones" in all instead of two, he was surprised and he told "Ah Kwang" that he "did not order this much" as he "merely ordered two stones".[79] He claimed that "Ah Kwang" had told him that three "stones" were for "Pekboon", one "stone" was for Salim and the other for himself.[80]

58 He further claimed initially that "Ah Kwang" had told him to collect payments from Salim and "Pekboon" but conceded under cross-examination that he had lied about having to collect any payments from them.[81] In addition, after claiming that he had collected the "D" drugs from "Ah Kwang",[82] he conceded under cross-examination that he had deliberately lied about the expected payment in the drug transaction involving the "D" drugs.[83] He also agreed that he had lied because he did not wish for the CNB to know who, when and where he had collected the "D" drugs from.[84] He was not re-examined on all these admissions. Nevertheless, he continued to maintain that the "D" drugs were not for himself but meant for Salim and "Pekboon" and he was only acting on "Ah Kwang"'s instructions.

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78 NE, 28 March 2023, p 41 ln 16–30.

79 NE, 28 March 2023, p 44 ln 12–24.

80 NE, 28 March 2023, p 44 ln 26–27.

81 NE, 28 March 2023, p 76 ln 17–18; p 79 ln 26–28; p 80 ln 10–11.

82 NE, 28 March 2023, p 71 ln 21–23.

83 NE, 28 March 2023, p 72 ln 1–3.

84 NE, 28 March 2023, p 71 ln 18–20; p 72 ln 4–6 .

Alleged phone calls and lack of incoming calls from foreign numbers

59 The accused's mobile phone call records[85] did not show any incoming calls from any foreign phone number, contrary to his claim that "Bob" had called him on 9 December 2020 sometime after 11pm using a Malaysian phone number.[86] This was also contrary to his claim in his 1st, 2nd and 5th long statements that "Ah Kwang" had called him at least once on 9 December 2020 using a "Malaysia line".[87]

60 As recorded in the IMH Report, the accused reportedly informed Dr Derrick Yeo that "Ah Kwang" had called him on the day of the alleged offence (*ie.* on 10 December 2020) instead of 9 December 2020.[88] At the trial, he repeated his initial claim that "Ah Kwang" did call him on 9 December 2020 to arrange the delivery of two "stones" through a WhatsApp call using a Malaysian number.[89] However, when it was suggested to him that "Ah Kwang" did not call him on 9 December 2020, the accused said that he could not remember.[90]

61 The accused vacillated greatly in his evidence on the alleged phone calls and arrangements made with "Ah Kwang" and Salim. When it was specifically put to him that "Ah Kwang" did not call him on 9 December 2020, his claim that he could not remember was contrary to the highly detailed account he gave in his contemporaneous and 1st, 2nd and 5th long statements that "Ah Kwang" had called him on 9 December 2020 using a Malaysian line. As for the accused's

85 AB243–277.

86 AB481 at para 7; AB566 at para 70.

87 AB481 at para 7; AB482 at para 9; AB513 at para 44.

88 AB239 at para 9.

89 NE, 28 March 2023, p 43 ln 1–3.

90 NE, 28 March 2023, p 71 ln 12–14.

claims about the alleged phone call(s) with Salim on 8 or 9 December 2020, this was ultimately of no consequence since he accepted under cross-examination that he had lied and falsely implicated Salim.[91]

Alleged payments from Salim and "Pekboon" and quantity of drugs involved

62 In his contemporaneous statement, the accused claimed that not only would "Ah Kwang" pay him $500 for his role in helping to deliver the drugs, he was also supposed to collect $11,100 from Salim and $7,400 from "Pekboon" respectively on behalf of "Ah Kwang".[92] He changed his evidence in his 6th long statement, claiming that he was "not expecting to collect any money" from either of them.[93] As noted above at [58], he eventually conceded under cross-examination that he had lied about having to collect any payments from them.

63 As for the quantity of drugs purportedly meant for delivery to Salim and "Pekboon", the accused offered a slew of different and continually evolving accounts. The accused initially stated in his contemporaneous statement that Salim was expecting to receive two black bundles and "Pekboon" was expecting one.[94] He then claimed in his 1st long statement that "Ah Kwang" had told him that two "stones" would be sent to him, one of which was for Salim and the other for the accused himself.[95] He claimed that upon collecting the drugs from "Bob", he was surprised to find five "stones" instead, packed in three black

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91 NE, 28 March 2023, p 80 ln 24–26.

92 AB330 at A22 and A23.

93 AB530 at para 62.

94 AB328 at A10; AB330 at A19–A23.

95 AB481 at para 7.

bundles.[96] "Ah Kwang" told him the remaining three "stones" were for "Pekboon", but the accused said he did not know who "Pekboon" was.[97]

64 The accused claimed that Salim subsequently informed him that "Pekboon" was supposed to take two "stones" from Salim, but Salim himself did not know whether the remaining three "stones" were meant for "Pekboon". Going by the accused's various accounts, it would mean that after having received the "D" drugs, he would end up giving either one, two, three, four or even all five "stones" to "Pekboon" and either none, half, one, two, three or four "stones" to Salim. Either none, half or one "stone" would be retained for himself.[98] His evidence on the quantity of "D" drugs meant for distribution among Salim, "Pekboon" and himself was profusely riddled with internal contradictions and ambiguity. The only reasonable inference was that he was simply making things up on the fly.

Objective evidence from the POLCAM footages

65 The POLCAM footages constituted objective evidence which completely contradicted the accused's claim that he took the lift from the flat down to the void deck at Block 305 on 9 December 2020 sometime after 11pm ostensibly to collect the "D" drugs from "Bob". The accused accepted that he would have been visible in the POLCAM footage if he had in fact taken the lift down to the void deck at the material time.[99] However, the accused was not seen in any of the relevant footage which was reviewed by IO Desmond for

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96 AB482 at para 9.

97 AB482 at para 9.

98 AB239 at para 9; AB330 at A19 and A20; AB481 at paras 7 and 9; AB482 at para 9; AB513 at para 44; NE, 28 March 2023, pp 74–77.

99 NE, 28 March 2023, p 65 ln 27–28.

9 December 2020 from 10.30pm to 10 December 2020 at 1.59am.[100]. When the accused was asked if he could explain why this was so, he had no explanation to offer.[101] When it was further put to him that he did not go down to the void deck at the material time, he claimed that he could not remember if he had.[102]

Alleged receipt of the "D" drugs from "Bob"

66 The accused gave two completely different accounts of the colour of the car that "Bob" drove and "Bob"'s race. He initially claimed in his contemporaneous statement that the car was blue and that he did not know who the driver was, but he was a male Chinese.[103] He changed his evidence in his 1st long statement[104] and during the trial[105] and maintained that the car was a white Mazda and "Bob" was Malay. He claimed that it was dark at the time and that he was unable to see "Bob" clearly, although he recalled that he spoke to "Bob" in Malay and thus he assumed that "Bob" was Malay.[106]

Deliberate lies to falsely implicate Salim

67 Salim denied any involvement in relation to the "D" drugs and denied ordering any drugs from the accused. Although Salim knew of the existence of a drug dealer named "Ah Kwang", he had only interacted with him in prison but not prior to his arrest. He had no prior dealings with "Ah Kwang" and was not

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100 AB471–472 at paras 98–99.

101 NE, 28 March 2023, p 65 ln 27–28.

102 NE, 28 March 2023, p 65 ln 30–32.

103 AB330 at A25.

104 AB481 at para 7.

105 NE, 28 March 2023, p 66 ln 4–10 and ln 30–32; p 67 ln 4–9 and ln 26–29.

106 NE, 28 March 2023, p 67 ln 12–20.

expecting any drugs from him.[107] Salim's evidence on these aspects was not challenged under cross-examination and no specific case for the defence was put to him other than to suggest that he was also selling drugs to maintain his lifestyle.[108] Salim's denials were entirely congruent with the accused's own admission that he had lied in his CNB statements and in his oral testimony about Salim's involvement in order to falsely implicate Salim. This put paid to the accused's plethora of false allegations about Salim's purported involvement with the "D" drugs.

Analysis and evaluation of the "courier" defence

68 It was clear that the accused's "courier" defence largely comprised a patchwork of shifting fabrications. His evidence was internally and externally inconsistent in material aspects. That being said, while he appeared to have no qualms lying when it suited his purpose, he was candid in conceding important aspects of the case against him under cross-examination. Crucially, for instance, he admitted that he had lied:

(a) in his statements and his oral testimony to falsely implicate Salim about the amount of diamorphine meant for Salim and about collecting any payment from him;[109]

(b) about when and where he had collected the drugs from, and about expecting to receive payment on "Ah Kwang"'s behalf from Salim and "Pekboon";[110] and

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107 NE, 29 March 2023, p 6 ln 27–30; p 7 ln 1–4.

108 NE, 29 March 2023, p 12, ln 10–15.

109 NE, 28 March 2023, p 80 ln 7–11; ln 24–29.

110 NE, 28 March 2023, p 72 ln 1–6; p 76 ln 17–18.

(c) about "Pekboon"'s contact details and the amount of diamorphine to be handed over to him.[111]

69 The accused's various admissions under cross-examination about having lied were presumptively reliable since they were contrary to his own interest. These were all deliberate lies on material issues raised in his defence. Hence, adopting the Court of Appeal's guidance in *Chukwudi* (at [60] and [62]), these lies could only have been motivated by his realisation of guilt and desire to obscure the truth. They were archetypal *Lucas* lies (*R v Lucas (Ruth)* [1981] QB 720) which were thus strongly corroborative of his guilt.

70 Despite the accused's concession that he had falsely implicated Salim, and that he would not be collecting any payments from Salim, he continued to insist when re-examined that he was only acting on "Ah Kwang"'s instructions to pass the "D" drugs or part thereof to Salim. This was illogical and irreconcilable. If he had fabricated his claims of Salim's involvement, the more likely inference was that no such instructions had actually been given by "Ah Kwang", if any instructions had indeed been given at all. There was also no cogent reason to disbelieve Salim's evidence that he was not involved with the "D" drugs, given the paucity of any other evidence implicating Salim and the accused's own admission that he had lied to falsely implicate Salim.

71 The accused also agreed that he had no explanation for some other key aspects of the evidence, such as the objective evidence in the POLCAM footages from 9 to 10 December 2020 which showed that he did not take the lift down to the void deck at the material time, as he had claimed, in order to collect the "D" drugs from "Bob". It was highly implausible that the "D" drugs were

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111 NE, 28 March 2023, p 72 ln 25–31; p 76 ln 11–18.

meant for "Pekboon" as this was no more than a bare and unsubstantiated assertion on the accused's part. He further claimed in his oral testimony that he did not have "Pekboon"'s contact number and was waiting to be contacted by Salim instead. When confronted with his own contradictory contemporaneous statement disclosing to SI Fadli what appeared to be a (Thai-registered) handphone number with a +66 country code as "Pekboon"'s number, he was caught flat-footed; he could only say in response that he could not "think of anything at [that] moment".[112]

72 Additionally, it was doubtful whether the accused did receive the "D" drugs from "Bob" as he claimed, in view of objective evidence in the POLCAM footages alongside the obvious shifts in the accused's evidence where "Bob" was concerned. These included his implausible account of "Bob" allegedly having called him using a Malaysian phone on 9 December 2020 and his prevarications over whether "Bob" was Chinese or Malay and whether the colour of the car that "Bob" allegedly drove was white or blue.

73 The upshot of the extensive inconsistencies and contradictions in the accused's defence was that his evidence in many areas was vague, random and virtually impossible to pin down. I note that when pressed to explain the numerous inconsistent responses, the accused's repeated excuse was that he was either "confused" or could not remember. To my mind, these convenient but feeble responses showed that he had exhausted his attempts to explain away his own fabrications.

74 The fact that the accused's DNA was not found on the "D" drug packaging was neither here nor there. It might have indicated that he had not

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112 NE, 28 March 2023, p 74 ln 1–3.

repacked or interfered with the drugs, but it did not thereby also constitute objective evidence in support of his "courier" defence. Similarly, the fact that the "D" drugs had not been repacked and were kept separately from the "A" and "B" drugs was of no assistance to his defence. I was unable to discern any semblance of a method or system to how the accused had chosen to place the drugs in various different random locations within the flat.

75 Finally, I accept that "Ah Kwang" and "Pekboon" might not have been fictitious characters, assuming that Salim was truthful (or accurate) in his evidence about them. However, this also did not assist the accused. Even assuming they did exist, their existence did not necessarily point towards their purported roles as characterised by the accused. Bearing in mind the accused's admission that he had falsely implicated Salim, I had serious doubts as to whether his evidence pertaining to "Ah Kwang" and "Pekboon" could be relied upon.

76 It was also submitted that the Prosecution had failed to adduce any direct evidence to disprove the accused's claims that he was holding on to the drugs for someone else.[113] With respect, this submission was misconceived. As the Prosecution rightly pointed out, it was the accused who bore the burden of proving on the balance of probabilities what he asserted, *ie*, that he was a mere courier. Even if there was no evidence of any payment made (or to be made) to "Ah Kwang" for the "D" drugs, this would neither weaken the Prosecution's case nor strengthen the "courier" defence.

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113 NE, 31 March 2023, p 8 ln 11–13.

77 I note that the accused had let slip in his evidence-in-chief that he had "ordered" the "D" drugs from "Ah Kwang",[114] even while claiming that the "D" drugs were not his. This was starkly telling of the highly dubious and unreliable nature of his defence. In addition, drug trafficking-related paraphernalia including empty plastic packets, masking tape and digital weighing scales were found in his possession, and he had admitted that the "A" and "D" drugs were intended for trafficking. The presence of such paraphernalia may not have been determinative of whether he was indeed a courier in respect of the "D" drugs, but it would increase the likelihood that all the drugs mentioned in the charge were intended for trafficking.

78 The multiple material inconsistencies and contradictions in the accused's evidence demonstrated that he had lied on numerous matters. By his own admission, he had falsely implicated Salim to lend credence to his story. More importantly, the accused had offered no credible explanation for his involvement with the "D" drugs. He could not account for why the "D" drugs were all in his possession. He also could not provide a consistent narrative of what he was supposed to do as a courier for "Ah Kwang". On his own evidence, he did not pay anyone to obtain the "D" drugs, and he would not be paid to deliver them to anyone either.

79 It was absolutely incredible that such a large quantity of drugs would simply have been sent to the accused on "Ah Kwang"'s instructions, purportedly for him to safekeep and deliver them without any expectation of payment. There was no clear benefit for the accused himself, such as in being entitled to a share of the "D" drugs for his own use, since he had claimed that "Pekboon" might end up taking all five "stones". Conversely, it would also have

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114 NE, 28 March 2023, p 44 ln 12–24.

been incredible for "Ah Kwang" to have entrusted him, through a cold call, for such a large quantity of drugs for delivery, and to make him responsible for collecting very substantial payments from Salim and "Pekboon", when the accused and "Ah Kwang" had never even contacted or met each other before.[115]

80 In another highly telling slip under cross-examination, the accused had agreed that the "D" drugs were found in a separate location from the "A" drugs because he was arrested before he could *repack and sell* the "D" drugs.[116] Bearing in mind the accused's undisputed status as a drug trafficker who would repack and sell the "A" drugs, the irresistible inference to be drawn from the totality of the evidence was that he had "ordered" the drugs from a supplier (who may or may not have been "Ah Kwang") and had similarly intended to repack and sell the "D" drugs. Having carefully examined the main facets of the accused's "courier" defence, I found that this was the most reasonable and obvious inference to be drawn.

81 In sum, I concluded that the accused did not discharge his burden of showing that he was a courier in respect of the "D" drugs. Having regard to the accused's evasive and sometimes incoherent answers, I was drawn to conclude that the truth of the matter was simply not what the accused had claimed. It would indeed appear that his evidence was erratic and confused, but this would only have been so because he had repeatedly lied in so many areas that he could no longer keep track of exactly which of his claims were fact and which of those were fiction. His perennially shifting evidence meant that it was virtually impossible to discern the whole truth from his tangled web of lies and embellishments, which were intermingled with selective admissions on his part.

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115 AB513 at para 44.

116 NE, 28 March 2023, p 81 ln 4–6.

Conclusion

82 Having carefully considered the evidence in totality, I found that the accused's "consumption" defence in relation to the "B" drugs and his "courier" defence in relation to the "D" drugs were both not credible. I was satisfied that the Prosecution had proven the charge beyond reasonable doubt. I found therefore that the accused was in possession of the "A", "B" and "D" drugs for the purpose of trafficking. In relation to the "D" drugs, he had not shown on the balance of probabilities that he was merely a courier.

83 The accused was found guilty as charged and convicted accordingly. While the Prosecution informed me that a certificate of substantive assistance would be issued given that the accused was deemed to have co-operated in disrupting drug activities, the alternative sentencing regime was not available to him in view of my finding that he was not a courier. Accordingly, I sentenced the accused to the mandatory death penalty.

84 I should add that even if I had erred in finding that the "B" drugs were in his possession for the purpose of trafficking, the combined weight of the "A" and "D" drugs, being 24.4g, would far exceed the 15g threshold beyond which capital punishment was prescribed. The mandatory death penalty would still have to be imposed upon conviction.

See Kee Oon
Judge of the High Court

Chin Jincheng, Heershan Kaur and Ng Jun Kai
(Attorney-General's Chambers) for the Prosecution;
Mahesh Rai s/o Vedprakash Rai (Drew & Napier LLC) and
Subir Singh Grewal (Aequitas Law LLP) for the accused.
