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

**[2023] SGHC 184**

Criminal Revision No 1 of 2023

Between

Sakthivel Sivasurian

… *Applicant*

And

Public Prosecutor

… *Respondent*

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# GROUNDS OF DECISION

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[Criminal Procedure and Sentencing — Revision of proceedings]
[Criminal Procedure and Sentencing — Bail]

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# v
# Public Prosecutor

**[2023] SGHC 184**

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**Vincent Hoong J:**

## Introduction

1 This was an application by the accused in SC-905056-2020, Mr Sakthivel Sivasurian ("the Applicant"), for his release on bail. It raised a number of issues, including the procedural propriety of the application as well as whether the District Judge ("DJ") had the power under s 103(4) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") to revoke the Applicant's bail.

2 The Applicant faced three charges under ss 323A and 267B of the Penal Code (Cap 224, 2008 Rev Ed) ("the PC") and reg 6(1) of the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 ("the COVID-19 Regulations"). Although he was initially released on bail by the State Courts, his bail was subsequently revoked owing to breaches of his bail conditions. The

Applicant later applied for bail to be offered to him, but his application was denied.

3 I dismissed the application after hearing the parties on 17 May 2023 and now set out the reasons for my decision.

## Background facts

### *The Applicant is first charged and released on bail*

4 The Applicant was first charged in the State Courts on 27 July 2020 with two offences under s 323A of the PC and reg 6(1) of the COVID-19 Regulations.[1] He was released on bail and claimed trial to the charge under s 323A of the PC.[2]

### *The Applicant is charged with a fresh offence and released on bail*

5 On 8 September 2022, the Applicant was arrested for an alleged offence under s 267B of the PC, for which he was charged in the State Courts on 9 September 2022.[3] The Applicant's bail was extended subject to his observance of a daily curfew from 10.00pm to 6.00am, during which he was not permitted to leave his home.[4] During a pre-trial conference on 20 October 2022, the

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1 Applicant's Submissions dated 15 May 2023 ("AS") at paras 5–6.

2 Petition for Revision dated 8 May 2023 ("PFR") at para 3.

3 PFR at para 4.

4 PFR at para 4; Conditioned Statement of Adam Goh Aik Yong dated 21 February 2023 ("Conditioned Statement of IO Goh") at para 3.

Applicant successfully applied to vary the hours of his curfew to 12.00am to 6.00am,[5] apparently on the basis that he needed to stay out late to work.[6]

6 The Applicant was not placed under electronic tagging. Instead, his compliance with his curfew was monitored in the following way. Before 12.00am each day, the Applicant was required to inform Investigating Officer Adam Goh Aik Yong ("IO Goh") when he had returned home and to send IO Goh his live location over WhatsApp. From 12.00am to 6.00am, the Applicant's mobile phone was to remain with him with its live location tracking function turned on.[7]

### *The Applicant breaches his bail conditions*

7 There was no dispute that the Applicant had breached his curfew on at least two occasions by leaving his mobile phone at home and going out between 12.00am and 6.00am.[8]

#### *The first breach*

8 The first breach occurred on 9 February 2023. At about 11.07pm on 8 February 2023, the Applicant claimed to have returned home and sent his live location to IO Goh.[9] In fact, he was then in the carpark about to go out. The Applicant then passed his mobile phone to his wife, enlisting her help to leave

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5 PFR at para 5.

6 Prosecution's Brief Submissions on Bail at para 6.

7 Prosecution's Brief Submissions on Bail at para 7; Conditioned Statement of IO Goh at para 3.

8 Prosecution's Brief Submissions on Bail at para 7; Conditioned Statement of IO Goh at para 4; 22 February 2023 Transcript at p 8 lines 25–26 and p 9 lines 13–14.

9 Conditioned Statement of IO Goh at para 4.

it at home, before going out.[10] At about 12.43am on 9 February 2023, the Applicant visited a nightclub where he consumed alcohol and danced.[11] He did so because he felt that the trial in respect of his alleged offence under s 323A of the PC was going to his advantage and wanted to celebrate.[12] The Applicant returned home at about 5.40am.[13]

*The second breach*

9 The second breach occurred on 19 February 2023. The Applicant left his home sometime between 11.15pm on 18 February 2023 and slightly past 12.00am on 19 February 2023.[14] He visited a bar sometime thereafter and remained there until at least 4.30am.[15] The Applicant returned home at about 5.30am.[16] The Applicant's initial position before the DJ on 22 February 2023 was that he had left home only to de-escalate an argument with his wife, who was experiencing an "episode" at the time. Further, he represented that he had gone only to sit in his car in the carpark while waiting for her to cool down.[17] However, the Applicant subsequently conceded before the DJ on 10 April 2023 that he had visited a bar during this time.[18]

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10 22 February 2023 Transcript at p 3 line 20 to p 4 line 2.

11 Conditioned Statement of IO Goh at paras 2 and 5–7.

12 22 February 2023 Transcript at p 9 lines 19–23.

13 Conditioned Statement of IO Goh at paras 2 and 5–7.

14 22 February 2023 Transcript at p 7 line 14 and p 12 line 31 to p 13 line 2.

15 22 February 2023 Transcript at p 13 lines 4–8.

16 22 February 2023 Transcript at p 7 lines 16–18; Conditioned Statement of IO Goh at paras 8–9.

17 22 February 2023 Transcript at p 6 line 15 to p 7 line 2.

18 10 April 2023 Minute Sheet at p 3.

10 The Applicant was arrested at about 12.05am on 21 February 2023 for breaching his bail conditions. He was also placed under investigation for possible offences under s 182 of the PC for lying to IO Goh.[19]

***The Applicant's bail is revoked***

11 Following the Applicant's arrest, the Prosecution applied to revoke his bail under s 103(4) of the CPC on the basis that he had breached his curfew on at least two occasions and, in the alternative, under s 102(1) of the CPC on the basis that he was now under investigation for possible offences under s 182 of the PC.[20]

12 On 22 February 2023, the DJ revoked the Applicant's bail, citing the following reasons:

(a) The Applicant's repeated breaches of his curfew and his attempts to circumvent the system which had been put in place to track his whereabouts, despite having been granted a concession in relation to his curfew hours, were strong evidence of his disingenuity and deviousness.[21]

(b) The breaches were difficult to detect and led the Police to expend much time and resources to verify the Applicant's lies.[22]

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19 Prosecution's Brief Submissions on Bail at para 1; 22 February 2023 Transcript at p 14 lines 16–32.

20 Prosecution's Brief Submissions on Bail at para 1.

21 22 February 2023 Transcript at p 24 lines 5–9.

22 22 February 2023 Transcript at p 24 lines 9–12.

(c) Under r 5(1)(*h*) of the Criminal Procedure Rules 2018 ("the CPR"), the DJ was required to have regard to the Applicant's failures to comply with his bail conditions in deciding whether, if released, he would not surrender to custody, be available for investigations, or attend court.[23]

(d) The DJ was not satisfied that the Applicant would not commit further breaches of his bail conditions given that he had already failed to comply with serious bail conditions and was also facing non-bailable offences.[24]

(e) The Applicant's breaches of his curfew and his lies to IO Goh had given rise to investigations into likely further offences committed while he was on bail.[25]

(f) The purpose of the Applicant's curfew was to safeguard the safety of the public while he was out on bail.[26]

(g) The Applicant's breaches were committed for personal enjoyment.[27]

***The Applicant's application for bail is refused***

13 On 30 March 2023, the Applicant applied for bail to be reoffered to him, citing material changes of circumstances and new facts that had come to light

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23 22 February 2023 Transcript at p 24 lines 12–17.

24 22 February 2023 Transcript at p 24 lines 18–22.

25 22 February 2023 Transcript at p 24 lines 22–25.

26 22 February 2023 Transcript at p 24 lines 25–29.

27 22 February 2023 Transcript at p 24 line 27 to p 25 line 2.

since the revocation of his bail.[28] The Applicant's principal submissions were as follows:

(a) The Applicant's breaches of his curfew were attributable to an alcohol addiction which he had since acknowledged and taken measures to address.[29]

(b) The Applicant's sudden remand was causing hardship to his family and employer.[30]

(c) The Applicant's breaches could be adequately addressed by subjecting him to electronic tagging and increasing his bail amount.[31]

14 On 10 April 2023, the DJ rejected the Applicant's application to be reoffered bail, citing the following reasons:

(a) Under r 5(1)(*h*) of the CPR, the DJ was required to have regard to the Applicant's failures to comply with his bail conditions in deciding whether, if released, he would not surrender to custody, be available for investigations, or attend court. It was therefore relevant that the Applicant had failed to comply with his bail conditions by breaching his curfew and committing fresh offences.[32]

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28 Submissions For Bail To Be Offered dated 30 March 2023 at para 10.

29 Submissions For Bail To Be Offered dated 30 March 2023 at paras 11–13.

30 Submissions For Bail To Be Offered dated 30 March 2023 at para 14.

31 Submissions For Bail To Be Offered dated 30 March 2023 at paras 15–20.

32 10 April 2023 Minute Sheet at p 4.

(b) The Applicant's alleged alcohol addiction and the measures he had taken to address it were unsubstantiated by evidence. In any event, the Applicant's alcohol addiction failed to explain why he had breached his curfew by visiting entertainment outlets when he could simply have consumed alcohol at home.[33]

(c) Any hardship or inconvenience caused to the Applicant's family or employer was nothing more than the usual hardship or inconvenience that a remanded or incarcerated accused person would cause to other people around him. Moreover, none of the evidence tendered by the Applicant showed that his remand had exacerbated his family situation.[34]

(d) The Applicant's submission that he could instead be placed under electronic monitoring suggested, troublingly, that it was the responsibility of the court or IO Goh to prevent further breaches on his part. In fact, IO Goh had previously worked out an arrangement to monitor his compliance with his curfew. It was the Applicant who had circumvented these measures with the assistance of his wife.[35]

(e) Taken as a whole, the Applicant's submissions revealed a lack of remorse for his conduct while out on bail. There remained a high risk of further non-compliance, including a failure to turn up for court proceedings, if bail were to be reoffered.[36]

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33 10 April 2023 Minute Sheet at p 4.

34 10 April 2023 Minute Sheet at p 4.

35 10 April 2023 Minute Sheet at pp 4–5.

36 10 April 2023 Minute Sheet at p 5.

## The parties' cases

15 On 8 May 2023, the Applicant filed a petition for criminal revision praying for the following orders:[37]

> a. To be released immediately on bail;
>
> b. The General Division of the High Court to call for and examine, on an expedited basis, the record of proceedings before the State Court relating to the Applicant's bail review hearing on 10 April 2023 before the [DJ]; and
>
> c. Such further or other relief as this Honourable Court deems fit.

16 The Applicant's submissions were as follows:

(a) The DJ had no power to revoke the Applicant's bail under s 103(4) of the CPC because the Applicant had not been arrested under s 103(1) for failing to surrender to custody, to make himself available for investigations, or to attend court despite being under a duty to do so.[38]

(b) Even if the DJ had the power to revoke the Applicant's bail, he was wrong to exercise this power. As the Applicant was charged with bailable offences, the DJ could only have revoked his bail if he had assessed that the Applicant was a flight risk. However, on the available evidence, the DJ could not have reasonably believed that the Applicant was a flight risk.[39]

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37 PFR at para 2.

38 PFR at paras 26–30; AS at para 23.

39 PFR at paras 16–25 and 31–34; AS at 24–34.

(c) The DJ was also wrong to reject the Applicant's application to be reoffered bail. He had done so for the improper purpose of compelling the Applicant to reflect on his actions. Moreover, he had not allowed the Applicant to read out his submissions during the hearing.[40]

17 The Prosecution opposed the application for the following reasons:

(a) The application had been wrongly brought as a criminal revision. It should instead have been brought as a criminal motion under s 97 of the CPC.

(b) The DJ had the power to revoke the Applicant's bail under ss 103(4) read with 103(3)(*b*) or, in the alternative, under s 102(1) of the CPC.[41]

(c) The DJ was correct to exercise his power to revoke the Applicant's bail. The Applicant had not only breached his curfew on at least two occasions, but also lied to the Police and the court about these breaches.[42]

(d) The DJ was also correct to reject the Applicant's application to be reoffered bail. The Applicant had failed to demonstrate any material changes of circumstances or new facts that had come to light since the revocation of his bail.[43]

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40 PFR at paras 10 and 23.

41 Respondent's Submissions dated 15 May 2023 ("RS") at paras 13–14.

42 RS at paras 15–18 and 22.

43 RS at paras 19–21.

**Issues to be determined**

18 The following issues arose for my determination:

(a) The first issue was whether the application had been correctly brought as a criminal revision ("Issue 1").

(b) The second issue was whether the DJ had the power to revoke the Applicant's bail ("Issue 2").

(c) If the DJ had the power to revoke the Applicant's bail, the third issue was whether he was wrong to exercise this power on 22 February 2023 ("Issue 3").

(d) The fourth issue was whether the DJ was wrong to reject the Applicant's application to be offered bail on 10 April 2023 ("Issue 4").

**Issue 1: Whether the application was correctly brought as a criminal revision**

19 I first address the preliminary objection, raised by the Prosecution at the hearing, that the application should have been brought as a criminal motion instead of a criminal revision.

20 To begin, I observed that the procedural form of the application was not material to the standard of review that was applicable to the present case. Regardless of whether brought as a criminal motion or a criminal revision, the application would be brought before the High Court in exercise of its revisionary jurisdiction (*Muhammad Feroz Khan bin Abdul Kader v Public Prosecutor* [2022] SGHC 287 ("*Muhammad Feroz*") at [23]–[24]), with the corollary that the threshold requirement for the High Court to act is that it must

be satisfied that the State Courts' decision would give rise to a "serious injustice" (*Muhammad Feroz* at [18]).

21 I nevertheless went on to consider, as a matter of procedural propriety, the form that the present application ought to have taken. As regards the Prosecution's objection, it was clear to me that the application could have been brought as a criminal motion under s 97(1)(*a*) of the CPC:

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

Indeed, *Muhammad Feroz* also concerned an application to the High Court by an accused person who had been denied bail in the State Courts. Although the application was dismissed by Sundaresh Menon CJ on its merits, there was no suggestion that it had been improperly brought as a criminal motion under s 97(1)(*a*) of the CPC. To similar effect was *Ewe Pang Kooi v Public Prosecutor* [2015] 2 SLR 672, in which an application to the High Court by an accused person who had been denied bail in the State Courts was brought as a criminal motion under an earlier version of s 97 of the CPC.

22 Notwithstanding my view that the application could have been brought as a criminal motion, it did not follow, in my judgment, that it had been improperly brought as a criminal revision. This turned on the distinct question of whether the High Court's revisionary powers could be exercised over a State Court's decision to deny bail. Having regard to the case authorities, I answered this question in the affirmative.

23 *Public Prosecutor v Sollihin bin Anhar* [2015] 2 SLR 1 ("*Sollihin (HC)*") concerned an application by the Prosecution to the High Court to revoke bail granted to an accused person by the State Courts. The accused person raised the preliminary objection that the application should have been filed as a criminal motion under an earlier version of s 97 of the CPC. Tay Yong Kwang J (as he then was) rejected this submission. This was largely because, as s 97 did not then confer on the High Court the power to revoke bail granted by the State Courts, the Prosecution's application could not in fact have been brought as a criminal motion under s 97 (at [26]–[28]). However, Tay J also considered at [29] that:

> Nevertheless, even if it were accepted that s 97 of the CPC enables the High Court to revoke bail granted by the State Courts, this does not necessarily lead to the conclusion that the Prosecution is disentitled from bringing a criminal revision to reverse a bail decision by the State Courts. The ascertainment of whether this was procedurally appropriate would depend on the separate issue of whether the scope of the High Court's revisionary powers is wide enough to review bail decisions by the State Courts. …

In Tay J's view, "the revisionary powers conferred on the High Court were sufficiently broad so as to allow it to reverse a State Court's decision to grant bail to an accused" (at [30]). Section 400(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), which is functionally identical to the present s 400(1) of the CPC, provided that these revisionary powers could be exercised over "any judgment, sentence or order" recorded or passed by the State Courts and, although s 400(2) foreclosed an application for criminal revision against an appealable decision, "a bail decision, being merely interlocutory and tentative in nature, would generally be regarded as a non-appealable order" (at [29], citing *Mohamed Razip and others v Public Prosecutor* [1987] SLR(R) 525 at [15]). The Court of Appeal in *Public Prosecutor v Sollihin bin Anhar* [2015] 3

SLR 447 ("*Sollihin (CA)*") did not disagree with Tay J's conclusion, which was endorsed by Menon CJ in *Public Prosecutor v Yang Yin* [2015] 2 SLR 78 ("*Yang Yin*") (at [20]–[21]).

24 I respectfully agreed with Tay J. Further, although *Sollihin (HC)* itself concerned a decision by the State Courts to grant bail, Tay J's reasoning suggested more broadly that a decision by the State Courts to deny bail would be equally susceptible to the High Court's revisionary powers. Indeed, it is now clear that an application to the High Court for bail, following the denial of bail in the State Courts, necessarily engages the High Court's revisionary jurisdiction and must satisfy the corresponding standard, even if the application is brought as a criminal motion (*Muhammad Feroz* at [18] and [23]–[24]). I was therefore of the view that the High Court's revisionary powers could be exercised over a State Court's decision to deny bail. The fact that the High Court is not exercising its appellate jurisdiction in such an application (*Muhammad Feroz* at [21]) was also further evidence that s 400(2) of the CPC would not preclude the exercise of these revisionary powers to be invoked through the specific means of an application for criminal revision.

25 Accordingly, I was also of the view that the Applicant's application to be released on bail had not been improperly brought as a criminal revision.

26 It is convenient at this juncture to articulate some general principles governing the exercise of the High Court's revisionary powers. In *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929 ("*Ang Poh Chuan*"), Yong Pung How CJ stated at [17] that:

> Thus various phrases may be used to identify the circumstances which would attract the exercise of the revisionary jurisdiction, but they all share the common

> denominator that there must be some serious injustice. Of course there cannot be a precise definition of what would constitute such serious injustice for that would in any event unduly circumscribe what must be a wide discretion vested in the court, the exercise of which would depend largely on the particular facts. But generally it must be shown that there is something palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below.

27 Similarly, Yong CJ stated in *Knight Glenn Jeyasingam v Public Prosecutor* [1998] 3 SLR(R) 196 at [19] that:

> The court's immediate duty is to satisfy itself as to the correctness, legality or propriety of any order passed and as to the regularity of any proceedings of that subordinate court. However, this is not sufficient to require the intervention of the courts on revision. The irregularity or otherwise noted from the record of proceedings must have resulted in grave and serious injustice…

28 The above remarks were cited with approval by Menon CJ in *Yang Yin*, which likewise involved a criminal revision against a bail decision by the State Courts. Menon CJ also observed that the high threshold of "serious injustice" meant that the High Court's revisionary powers would only be exercised sparingly (at [25], citing *Yunani bin Abdul Hamid v Public Prosecutor* [2008] 3 SLR(R) 383 at [47]).

29 I address one other point before turning to the merits of the application. It was incumbent on the Applicant, having brought his application as a criminal revision, to identify the specific decision of the DJ of which he was seeking revision. The Applicant's initial position was that he was only seeking revision of the DJ's rejection, on 10 April 2023, of his application to be reoffered bail. In his Petition for Revision, the Applicant prayed for an order that "[t]he General Division of the High Court… call for and examine, on an expedited basis, the record of proceedings before the State Court *relating to the*

*Applicant's bail review hearing on 10 April 2023* before the [DJ]" [emphasis added].[44] In his written submissions, the Applicant also stated unequivocally that he was "not challenging the decision of [the DJ] to revoke the Applicant's bail on 22 February 2023" but only "the [DJ's] decision at the bail review on 10 April 2023".[45]

30 This position struck me as odd because the Applicant's arguments were largely directed toward the DJ's revocation of his bail on 22 February 2023 and not at the DJ's rejection of his application to be reoffered bail on 10 April 2023. Perhaps realising this, the Applicant's counsel, Mr Yong Hong Kit Clement ("Mr Yong"), clarified at the hearing that he was seeking revision of the "totality" of the DJ's decisions on 22 February 2023 and 10 April 2023.

31 I was conscious that this position had not been expressed in such terms in the Applicant's Petition for Revision. Nonetheless, in my view, it was relatively clear from the arguments contained therein that the Applicant was in reality challenging both the DJ's decisions on 22 February 2023 and 10 April 2023. Given that the Prosecution in its written submissions defended both decisions against the Applicant's objections, it also appeared to have shared this understanding of his position. In the premises, I was of the view that no prejudice would be occasioned to the Prosecution if I was to examine both the DJ's decisions in the course of dealing with the application.

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44 PFR at para 2.

45 AS at para 21.

**Issue 2: Whether the DJ had the power to revoke the Applicant's bail**

32 I first address the DJ's revocation of the Applicant's bail on 22 February 2023, beginning with the question of whether he had the power to do so.

33 In my judgment, the DJ did have the power under s 103(4) of the CPC to revoke the Applicant's bail. Section 103(4) provides:

> When such a person is brought before the court pursuant to an arrest under this section and the court thinks that the person —
>
> (*a*) is unlikely to surrender to custody, or to make himself or herself available for investigations or to attend court; or
>
> (*b*) has broken or is likely to break any conditions of his or her bail or personal bond,
>
> the court may remand the person in custody or grant him or her bail subject to such conditions as it thinks fit.

34 The power under s 103(4) to remand a released person in custody is subject to two preconditions:

(a) first, the released person must have been brought before the court "pursuant to an arrest under this section"; and

(b) second, the court must think that the released person:

(i) is unlikely to surrender to custody, to make himself available for investigations, or to attend court (s 103(4)(*a*)); or

(ii) has broken or is likely to break any conditions of his bail or personal bond (s 103(4)(*b*)).

35 There was no dispute that the second precondition was satisfied, the Applicant having breached the curfew which formed one of the conditions of

his bail (s 103(4)(*b*)). However, the Applicant contended in his Petition for Revision that the first precondition had not been fulfilled because he had not been arrested under s 103(1) of the CPC for failing to surrender to custody, to make himself available for investigations, or to attend court despite being under a duty to do so.[46] It followed, in his submission, that the DJ had "[made] an order for [*sic*] which he had no power to make", "result[ing] in the unlawful deprivation of [his] liberty".[47] On this basis, the Applicant likened his application for release on bail to an application for *habeas corpus*.[48]

36 I rejected this argument, which was predicated on a clear misreading of the first precondition under s 103(4). This first precondition does not require a released person to have been brought before the court pursuant to an arrest under s 103(1) specifically. All it requires is that the accused person be brought before the court "pursuant to an arrest under this section", *ie*, s 103 of the CPC. The first precondition is therefore equally satisfied when a released person is brought before the court pursuant to an arrest under s 103(3)(*b*) of the CPC:

> A released person under a duty to surrender to custody, or to make himself or herself available for investigations or to attend court on the day and at the time and place appointed for him or her to do so, may be arrested without a warrant if —
>
> …
>
> (*b*) there are reasonable grounds for believing that he or she is likely to break or has broken any of the conditions of his or her bail or personal bond…

37 On the Applicant's own account, his arrest on 21 February 2023 was clearly an arrest under s 103(3)(*b*) of the CPC. At the relevant time, he was a

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46 PFR at paras 26–30.

47 PFR at para 36.

48 PFR at para 36.

released person under a duty to attend court on an appointed day and at an appointed time and place. The trial in respect of his alleged offence under s 323A of the PC was then still underway and had next been fixed for a pre-trial conference on 11 May 2023.[49] Moreover, the Applicant was arrested for breaching his curfew and therefore breaking a condition of his bail.[50]

38 I was therefore satisfied that both preconditions under s 103(4) of the CPC had been fulfilled and, accordingly, that the DJ did have the power to revoke the Applicant's bail under that section. In the premises, it was unnecessary for me to decide whether the DJ also had the power under s 102(1) to revoke the Applicant's bail.

39 I should add that the Applicant subsequently resiled from the position, originally expressed in such forceful terms in his Petition for Review (see [35] above), that the DJ lacked the power to revoke his bail. In his written submissions, the Applicant conceded that the DJ would have had the power to do so under s 102(1) of the CPC in any event.[51] Additionally, when I drew Mr Yong's attention to s 103(3)(*b*) of the CPC during the hearing, he responded that he would not argue against a "literal interpretation" of that provision and was content to leave the matter to the court. He also subsequently accepted that the DJ did have the power to revoke the Applicant's bail under ss 103(4) or 102(1) of the CPC. Mr Yong continued to maintain, however, that the DJ was wrong to exercise this power. It is thus to this issue that I next turn.

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49 PFR at para 3.

50 PFR at para 6.

51 AS at paras 24–29.

**Issue 3: Whether the DJ was wrong to exercise his power to revoke the Applicant's bail**

40 The Applicant constructed the following argument in support of his submission that the DJ should not have exercised the power to revoke his bail:

(a) The Applicant was charged with bailable offences.[52]

(b) It followed that the DJ could only have revoked the Applicant's bail if he had assessed that the Applicant was a flight risk.[53]

(c) However, on the available evidence, the DJ could not have reasonably believed that the Applicant was a flight risk.[54]

***Whether the Applicant's alleged offences were bailable offences***

41 Beginning with the first step of the argument, I agreed with the Applicant that his alleged offences were all bailable offences.[55] It followed that the DJ was, with respect, clearly wrong to say that the Applicant was facing non-bailable offences (see [12(d)] above). The Applicant was charged with three offences under ss 323A and 267B of the PC and reg 6(1) of the COVID-19 Regulations. The offences under ss 323A and 267B of the PC are expressly designated as bailable offences under the First Schedule to the CPC. Further, the First Schedule provides that offences against laws other than the PC, if punishable with imprisonment for less than three years, are bailable offences. Thus, the offence under reg 6(1) of the COVID-19 Regulations, being

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52 PFR at para 16; AS at para 2.

53 PFR at para 17; AS at para 13.

54 PFR at paras 21–25; AS at paras 29–34.

55 PFR at para 16; AS at para 2.

punishable under s 34(7) of the COVID-19 (Temporary Measures) Act 2020 with a fine not exceeding $10,000 or imprisonment for a term not exceeding six months or both, is also a bailable offence. Even if the DJ had been referring to the offences under s 182 of the PC for which the Applicant was under investigation, these are expressly designated as bailable offences under the First Schedule.

42 Nonetheless, I was not persuaded that this error alone constituted or had produced a "serious injustice" sufficient to warrant the exercise of the High Court's revisionary powers. Had the DJ been deciding whether to grant bail to the Applicant at the first mention, his erroneous classification of the offences as non-bailable would likely have been material. This is because bail is generally available under s 92 of the CPC for bailable offences, but a person charged with non-bailable offences has no such right under s 93 of the CPC and bears the burden of showing why bail should nonetheless be extended to him (*Yang Yin* at [29], citing *S Selvamsylvester v Public Prosecutor* [2005] 4 SLR(R) 409 at [22]). Here, however, the DJ was instead deciding whether to revoke the Applicant's bail owing to breaches of his bail conditions. Although the classification of his alleged offences as bailable or non-bailable remained a relevant consideration, it was only one of many factors to be weighed in the balance. Indeed, the DJ's reasons were focused largely on the unacceptability of the Applicant's breaches as well as the deceptive conduct by which they were accompanied (see [12] above). The misapprehension that the Applicant was facing non-bailable offences featured only in one passing reference and was nowhere else repeated. Thus, even though the DJ had indeed erred as rightfully pointed out by the Applicant, this error was not central to his decision to revoke the Applicant's bail.

***Whether the DJ could only have revoked the Applicant's bail if he had assessed that the Applicant was a flight risk***

43 The second step of the Applicant's argument, following from the observation that he was charged with bailable offences, consisted of the claim that the DJ could only have revoked the Applicant's bail if he had assessed that the Applicant was a flight risk.[56] This claim was built upon two planks, both of which I rejected.

44 First, the Applicant referred to s 92 of the CPC:

> **When person must normally be released on bail or personal bond, or on both**
>
> **92.—**(1) When any person, except a person accused of a non-bailable offence —
>
> (*a*) is arrested or detained without warrant by a police officer, or appears or is brought before a court; and
>
> (*b*) is prepared to give bail at any time while in the police officer's custody or at any stage of the proceedings before the court,
>
> the person must be released on bail by a police officer in cases determined by the Commissioner of Police or by that court.
>
> …
>
> (3) Despite subsections (1) and (2), where the person is accused of an offence that is not a fine-only offence, and a court believes, on any ground prescribed in the Criminal Procedure Rules, that the person, if released, will not surrender to custody, be available for investigations or attend court, the court may order as follows:
>
> …
>
> (b) if the person appears or is brought before the court — refuse to release the person, whether on bail, on personal bond, or on bail and on personal bond.

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[56] PFR at para 17; AS at para 13.

His argument appeared to be that, as s 92(3) contained the sole exception to the general right expressed in s 92(1) of a person accused of a bailable offences to be released on bail, such a person could only have his bail revoked if the court believed that he would not, if released, surrender to custody, be available for investigations, or attend court.

45 I disagreed with this analysis, which conflated the distinct questions of: (a) whether bail should be granted at the first mention; and (b) whether bail, having earlier been granted, should subsequently be revoked. Although s 92 governs (a), it is of no application to (b), which, assuming that the court is possessed of the requisite power under ss 103(4) or 102(1) of the CPC, is a matter instead of judicial discretion. This distinction, which I have already alluded to at [42] – between the grant of bail at the first mention and its subsequent revocation – was explicitly recognised by the Court of Appeal in *Sollihin (CA)* at [23]:

> Save for the fact that *bail must be granted at the first mention in cases involving bailable offences pursuant to s 92(1) of the CPC*, all bail decisions in relation to the granting or denial of bail for non-bailable offences, the quantum of bail, the imposition of bail conditions and the *revocation of bail* entail the *exercise of judicial discretion*… [emphasis added]

46 It is especially clear that s 92 can be of no application where the court is exercising its power under s 103(4) of the CPC to revoke a released person's bail. As discussed earlier, this power is subject to two preconditions, the second of which may be satisfied in two alternative ways (see [34(b)] above). Section 103(4)(*a*), which is expressed in broadly similar terms to s 92(3), allows the revocation of bail where the court thinks the released person is unlikely to surrender to custody, to make himself available for investigations, or to attend court. Section 103(4)(*b*), meanwhile, allows the revocation of bail where the

court thinks that the released person has broken or is likely to break any of his bail conditions. This is not dependent on any judgment by the court that the released person is unlikely to surrender to custody, to make himself available for investigations, or to attend court. To read the power under s 103(4) as subject to s 92 would render s 103(4)(*b*) otiose.

47 Second, the Applicant also relied on the following remarks by Menon CJ in *Muhammad Feroz* (at [1] and [26]):

> 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. …
>
> …
>
> 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]. …

On the strength of these remarks, Mr Yong submitted during the hearing that the DJ was wrong to revoke the Applicant's bail for public safety reasons (see [12(f)]). According to Mr Yong, the safety of the public was irrelevant to the question of whether the Applicant constituted a flight risk and, accordingly, did not engage the State's limited interest in securing his attendance during proceedings.

48 I disagreed with this analysis as well. In my judgment, whether an accused person is a flight risk is not the sole consideration to which a court may

have regard in making a bail decision. Indeed, Menon CJ in *Feroz* acknowledged at [1] that the court is required to "balance a myriad of interests and considerations", of which the question whether the accused person is a flight risk is only "the most common". I discuss some of the other relevant interests and considerations below.

49 Relatedly, the State's interest in a bail decision is not, in my judgment, limited to its interest in securing the attendance of the accused person during proceedings. I accept that this aspect of the State's interest was accorded particular emphasis in *Muhammad Feroz* at [26]. But this is unsurprising given that *Muhammad Feroz* involved an accused person who had absconded and failed to attend court. In my respectful view, Menon CJ could not have intended to depart from the well-established position, clearly articulated in the following cases, that the State's interest in a bail decision encompasses a range of other interests than its interest in securing the attendance of the accused person.

50 In *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 ("*Loqmanul*"), which Menon CJ cited in *Muhammad Feroz* at [26], V K Rajah JA stated at [54] that:

> As in all balancing exercises, in this case, between public interest and individual liberty, there are instances in which bail should not be granted. To give but two pertinent examples: where it is likely that the accused (a) would seek to use his liberty to *intimidate witnesses* or *tamper with evidence*; (b) abscond, or *abuse his freedom to pose further harm to society via the commission of further offences whilst on bail*. The courts would be remiss in discharging their functions if they mechanically grant or refuse bail. Seen from this perspective, the granting of bail in every case involves a calculated assessment on the part of the courts (or the police, in the case of police bail), incorporating both a belief and trust that the alleged offender *would not abuse his liberty to reoffend against society and/or disrupt the administration of justice*. … [emphasis added]

51 Next, in *Yang Yin*, which the Applicant cited,[57] Menon CJ himself stated at [44] that:

> The following non-exhaustive considerations may be taken into account by a court which has to determine whether to grant bail (see *Public Prosecutor v Wee Swee Siang* [1948] MLJ 114):
>
> (a) Whether there are reasonable grounds for believing the accused is guilty of the offence;
>
> (b) The nature and gravity of the offence charged;
>
> (c) The severity and degree of punishment that might follow;
>
> (d) The danger of the accused absconding if released on bail;
>
> (e) The accused's character, means and standing;
>
> (f) *The danger of the offence being continued or repeated*;
>
> (g) *The danger of witnesses being tampered with*;
>
> (h) Whether the grant of bail is essential to ensure that the accused has an adequate opportunity to prepare his defence; and
>
> (i) The length of the period of detention of the accused and the probability of any further period of delay.
>
> …
>
> [emphasis added]

52 Finally, in *Sollihin (CA)*, the Court of Appeal stated at [24] that:

> It is thus often said that a bail decision entails balancing the right of the accused to liberty before he has been convicted with *the interests of the community as a whole*. The latter covers a *broad based range of considerations* including the need to secure the attendance of the accused, which is a matter of importance to society because it is directed at upholding the efficacy of the criminal justice system. *Other aspects of the interests of society include the need to guard against the possibility of witnesses being tampered with which could prejudice a fair trial or against the danger of further offences being committed by the accused if he were not confined.* The court, in appropriate circumstances, will similarly also take into

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57 AS at para 33.

> consideration other factors in the accused person's interest such as his health or the fact that trial is being unduly delayed.
> …
>
> [emphasis added]

53 Each of these cases clearly demonstrates that the State's interest in a bail decision is not limited to its interest in securing the attendance of the accused person during proceedings. Also relevant are its legitimate interests in, among others: (a) preventing the commission of further offences; (b) preventing any prejudice to a fair trial. It follows that a court in making a bail decision may also consider the risk that the accused person will reoffend, intimidate witnesses, or tamper with evidence if he is released. The question of whether the accused person is a flight risk is by no means the sole relevant consideration.

54 I therefore disagreed that the DJ could only have revoked the Applicant's bail if he had assessed that the Applicant was a flight risk. This submission wrongly assumed that the revocation of bail was subject to s 92 of the CPC and was also predicated on an untenably narrow reading of *Muhammad Feroz*. Having rejected the second step of the Applicant's argument, it was not necessary for me to consider its third step, which consisted of the claim that the Applicant was not a flight risk.[58] As I will now explain, the DJ's decision to revoke his bail was amply justified even on the assumption that he was not.

### ***Whether the DJ was correct to assess that the balance of interests had shifted***

55 In *Sollihin (CA)*, the Court of Appeal stated at [34] that:

> … [A] decision to revoke bail pursuant to s 103(4)(*b*) of the CPC is not to be justified on the grounds that it is to punish the

[58] PR at para 21; AS at para 31.

> accused for breaching a bail condition. The condition would have been imposed in the first place to enable the court to strike a suitable balance between the interests of the accused and those of society. If that balance has shifted, then the court may intervene. But the fact remains that the breach or anticipated breach of the condition is only a factor, albeit a potentially important one, in the balancing exercise which remains the premise of any decision to revoke bail - and so the question for the court is whether that balance has shifted. …

56 In my view, the DJ was correct to conclude, in the light of the Applicant's undisputed breaches of his curfew, that the balance between his interests and those of society had indeed shifted so as to justify the revocation of his bail.

(a) First, the Applicant's non-compliance with his curfew meant that he was at significant risk of reoffending. His alleged offences generally arose out of violent conduct taking place late at night or in the early morning:

(i) The Applicant's charge under s 323A of the PC alleged that he had punched a male victim at about 11.16pm on 18 July 2020, causing the victim to fall to the ground and die. Although the Applicant denied during the trial that he had punched the victim or caused his death, he conceded that he had "struck him with a slap".[59]

(ii) The Applicant's charge under s 267B of the PC alleged that he had fought with another person in a public place at about 4.36am on 8 September 2022.

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[59] Defence's Submission that the Accused has No Case to Answer dated 10 March 2023 at para 9.

In the circumstances, it is abundantly clear that the Appellant's curfew was intended to prevent him from reoffending. Thus, in breaching his curfew – not only by leaving home at late hours but also by going to entertainment outlets to consume alcohol – the Applicant endangered the safety of the public. I was therefore unable to accept the Applicant's characterisation of his conduct as a "minor infraction"[60] or "*de minimis*".[61]

(b) Second, and more importantly, the Applicant's breaches were accompanied by deceptive behaviour consisting of lies to the Police and the DJ. The Applicant left his mobile phone at home to give IO Goh the false impression that he was at home when he had in fact gone out. He was also not forthcoming before the DJ about his second breach. As discussed above, on 22 February 2023, the Applicant initially maintained through his former counsel, Mr Sanjiv Vaswani ("Mr Vaswani"), that he had left home on 19 February 2023 only to sit in his car in the carpark. It was only on 10 April 2023 that the Applicant admitted to having visited a bar during that time (see [9] above). This dishonest conduct could not be treated lightly. It was also suggestive that other attempts to monitor the Applicant short of revoking bail, such as through e-tagging or reporting, would be similarly dishonestly exploited by him.

(c) Third, the duration of the Applicant's curfew had already been varied by the court on the basis of his claim that he needed to stay out

60 PFR at paras 22–23.

61 PFR at para 21.

late to work. The Applicant exploited the court's indulgence to visit entertainment outlets for frivolous reasons.

57 For these reasons, I agreed with the DJ's decision to revoke the Applicant's bail, even after I had taken into account that the Applicant's offences were bailable as of right. There was therefore no reason for me to exercise the High Court's revisionary powers over this decision.

**Issue 4: Whether the DJ should have rejected the Applicant's application to be offered bail**

58 I turn finally to the DJ's rejection, on 10 April 2023, of the Applicant's application for bail to be reoffered to him. The Applicant did not challenge the substance of this decision but raised the following two complaints in his Petition for Review. Although these were not taken up in his written submissions, I address them now for completeness.

59 First, the Applicant took exception to an alleged comment by the DJ that he should "sit in to reflect".[62] This showed, he claimed, that the DJ had rejected his bail application for the improper purpose of compelling his personal reflection.[63]

60 I rejected this argument. I took the liberty to examine the records of the proceedings referred to by the Applicant, which showed that the DJ's remarks were as follows:[64]

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62 PR at para 10.

63 PR at para 23.

64 10 April 2023 Minute Sheet at p 4.

> I would suggest that the accused takes this time in remand to reflect upon his actions and how his actions lead to consequences that further lead to the pain that he is causing to his family, including his eldest daughter. Every action will lead to a consequence.

In my view, these remarks were wholly unobjectionable. In context, the DJ was then addressing the Applicant's submission that his sudden remand was causing hardship to his family. The DJ had already explained why this alleged hardship was unexceptional and, in any event, causally unrelated to the revocation of the Applicant's bail. Having done so, the DJ then issued the remarks extracted above. They clearly did not form the basis of his decision, which he had already justified on other grounds, and accordingly did not disclose any improper purpose on the DJ's part. Indeed, the DJ had earlier acknowledged that "[t]he deprivation of bail is never intended to be a punishment or the first resort".[65]

61 Second, the Applicant complained that the DJ had not permitted him to read from his submissions during the hearing.[66] These were written submissions prepared by Mr Vaswani, who subsequently discharged himself prior to the hearing owing to his unavailability.

62 This complaint was also entirely spurious. The written records of the proceedings indicated that the DJ had permitted the Applicant to speak at length despite his oral submissions being almost entirely repetitive of Mr Vaswani's written submissions. In fact, the DJ had at two separate junctures asked the Applicant if he had anything else to add.[67] The Applicant's allegation was therefore completely unfounded.

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65 10 April 2023 Minute Sheet at p 4.

66 PR at para 10.

67 10 April 2023 Minute Sheet at p 3.

63 The Applicant's two complaints both being unmeritorious, there was no basis for me to exercise the High Court's revisionary powers over the DJ's decision.

64 In any event, I agreed with the DJ that the Applicant had failed to adduce any reason to justify a departure from the DJ's earlier decision to deny him bail.

**Conclusion**

**65** In conclusion, I was of the view that the DJ did have the power under s 103(4) of the CPC to revoke the Applicant's bail and, further, that he was correct to exercise this power. I was also of the view that the DJ was correct to reject the Applicant's subsequent application to be reoffered bail. It followed that the DJ's decisions could not be described as wrong, much less palpably wrong, such as to meet the high threshold of "serious injustice" on which any exercise of the High Court's revisionary powers is contingent.

66 I therefore dismissed the application.

Vincent Hoong
Judge of the High Court

Yong Hong Kit Clement (Yang Fengji) (Yeo Marini Law Corporation) for the applicant;
R Arvindren (Attorney-General's Chambers) for the respondent.

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