

Public Prosecutor v Lim Yong Nam
[2012] SGHC 45

Case Number : Criminal Motion No 7 of 2012
Decision Date : 05 March 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Mark Jayaratnam and Crystal Tan (Attorney-General's Chambers) for the applicant; Hamidul Haq, Thong Chee Kun and Yusfiyanto Yatiman (Rajah & Tan LLP) for the respondent.
Parties : Public Prosecutor — Lim Yong Nam

Criminal Procedure And Sentencing – Extradition – Bail – Whether bail may be granted after committal proceedings under the Extradition Act – Section 11 Extradition Act (Cap 103, 2000 Rev Ed)

5 March 2012

Choo Han Teck J:

1 The respondent was apprehended with three other persons on 25 October 2011 under a Warrant of Apprehension issued by a Subordinate Courts judge pursuant to a Notice by the Minister under s 9(1)(a) of the Extradition Act (Cap 103, 2000 Rev Ed). The respondent was subsequently released on bail of \$100,000 pending committal proceedings. The committal proceedings were held on 9 and 12 December 2011, and 2 to 3 February 2012. On 10 February 2012 the Magistrate committed the respondent to prison pending extradition to the United States of America and allowed the respondent's application to continue to be on bail after the committal order.

2 The Public Prosecutor applied before me to revoke the order for bail pending extradition. Deputy Public Prosecutor Mr Mark Jayaratnam submitted that the Magistrate had no authority under the Extradition Act to grant bail once a warrant of committal has been made pursuant to s 11(7) of the Extradition Act. The relevant provision in the Extradition Act is s 11. For convenience, this provision is set out in full below together with s 12:

Proceedings after apprehension of person

11.—(1) A person who is apprehended under a warrant issued under section 10 shall, unless he is sooner released, be brought as soon as practicable before a Magistrate.

(2) The Magistrate may remand a person brought before him under this section, either in custody or on bail, for a period or periods not exceeding 7 days at any one time.

(3) Where a Magistrate remands a person for such a period, the person may, at the expiration of the period, be brought before the Magistrate or before any other Magistrate.

(4) In the application of subsections (5) to (10) in relation to a person who has been apprehended under a warrant issued under section 10, "Magistrate" means the Magistrate before whom the person is brought after he was apprehended or at the expiration of a period for which he has been remanded under this section, as the case may be.

(5) If the person was apprehended under a warrant issued otherwise than in pursuance of an authority by the Minister in a notice under section 9(1)(a), the Magistrate shall remand the person in accordance with subsections (2) and (3) until the Magistrate receives a notice under section 9(1)(b) from the Minister informing the Magistrate that a requisition for the surrender of the person has been made to the Minister by a foreign State.

(6) Where the Magistrate does not receive such a notice within such time as is reasonable having regard to all the circumstances, the Magistrate shall —

(a) if the person apprehended is held in custody, order that he be released; or

(b) if he has been admitted to bail, make an order discharging the recognizances upon which he was admitted to bail.

(7) If the person was apprehended under a warrant issued in pursuance of an authority by the Minister in a notice under section 9(1)(a) or the Magistrate receives a notice from the Minister under section 9(1)(b) and —

(a) there is produced to the Magistrate a duly authenticated foreign warrant in respect of the person issued in the foreign State that made the requisition for the surrender of the person;

(b) there is produced to the Magistrate —

(i) in the case of a person who is accused of an extradition crime — such evidence as would, in the opinion of the Magistrate, according to the law in force in Singapore, justify the trial of the person if the act or omission constituting that crime had taken place in, or within the jurisdiction of Singapore; or

(ii) in the case of a person who is alleged to have been convicted of an extradition crime — sufficient evidence to satisfy the Magistrate that the person has been convicted of that crime; and

(c) the Magistrate is satisfied, after hearing any evidence tendered by the person, that the person is liable to be surrendered to the foreign State that made the requisition for the surrender,

the Magistrate shall, by warrant in accordance with Form 5 in the Second Schedule, commit the person to prison to await the warrant of the Minister for his surrender but otherwise shall order that the person be released.

(8) Where the Magistrate is of the opinion that it would be dangerous to the life or prejudicial to the health of the person to commit him to prison, he may, in lieu of committing him to prison, by warrant, order that he be held in custody at the place where he is for the time being, or at any other place to which the Magistrate considers that he can be removed without danger to his life or prejudice to his health, until such time as he can without such danger or prejudice be committed to prison or he is surrendered.

(9) In the case referred to in subsection (8), the warrant shall be in accordance with Form 5 in the Second Schedule with such variations as are necessary to meet the circumstances of the case.

(10) Where, under this section, a Magistrate commits a person to prison or otherwise orders that he be held in custody, he shall forthwith send to the Minister a certificate to that effect and such report (if any) relating to the proceedings as he thinks fit.

Surrender of fugitive to foreign State

12.—(1) When, under this Part, a Magistrate commits a person (referred to in this section as the prisoner) to prison, or otherwise orders that he be held in custody, to await the warrant of the Minister for his surrender to a foreign State, the Magistrate shall inform the prisoner that he will not be surrendered until after the expiration of the period of 15 days from the date of the committal or order and that, if he asserts that his detention is unlawful, he may apply to a court of competent jurisdiction for an Order for Review of Detention.

(2) After —

(a) the expiration of the period referred to in subsection (1); or

(b) if, within that period, an application for an Order for Review of Detention is made by the prisoner and the court to which the application is made or, where an appeal is brought from the decision of that court to another court, the other court does not order that the prisoner be released — the expiration of the period of 15 days from the date of the decision of the first-mentioned court or the appellate court, as the case may be,

whichever is the later, the Minister may, in his discretion, if he is satisfied that the prisoner is liable to be surrendered to the foreign State, by warrant in accordance with Form 6 in the Second Schedule or, where the prisoner is held in custody otherwise than at a prison, in accordance with that Form with such variations as are necessary to meet the circumstances of the case, order that the prisoner be delivered into the custody of a person specified in the warrant and be conveyed by that person to a place in the foreign State or within the jurisdiction of, or of a part of, the foreign State and there surrendered to some person appointed by the foreign State to receive him.

(3) A warrant issued under subsection (2) may be executed according to its tenor.

(4) If the prisoner escapes from the custody of the person executing the warrant, he may be retaken in the same manner as a person accused of an offence against the law in force in Singapore may be taken upon an escape from lawful custody.

(5) Any property in the possession of the prisoner at the time of his apprehension that may be material as evidence in proving the offence to which the requisition for his surrender relates shall, if the Minister so directs, be delivered up with the prisoner on his surrender.

It will be seen that s 11 only provides for bail pending the committal hearing. A fundamental principle in criminal process is that until a person has been charged, he is presumed to be innocent of any wrongdoing that warrants detention unless the court is satisfied that he is a flight risk in the face of impending or ongoing police investigation. This is not the case here. Extradition proceedings are not a local criminal matter although there may be cases where the person to be extradited would have also committed an offence here. It was not disputed that the respondent was granted bail prior to committal because of his medical condition. The Public Prosecutor did not challenge that bail, but takes the view that there is no provision for bail after a warrant of committal has been issued.

3 The issue of bail arose only after the respondent had been committed to prison pending his surrender to the United States government. A warrant of committal under the Extradition Act is a final order insofar as there is no provision in the Act for an appeal. That person may still challenge the order for committal but such challenge is not an appeal. A right of appeal must be specifically provided by statute. The challenge to the warrant of committal is an application for an Order for Review of Detention. The process of review of the detention order was once known as the "*habeas corpus*" procedure which came about in 1605 when a writ was issued in the name of the reigning sovereign King James for the body of one Nicholas Lowe to be produced before the King's Bench and to have his detention explained and justified. The modern review of detention is structured by legislation and is a right under statute. Generally, the fundamental rationale for such reviews remains. It is a relief when there is no other remedy available. Bail implies that some remedy exists (for example, the availability of appeal).

4 Under the Extradition Act, once a warrant of committal is issued, only the order to surrender the prisoner to the applicant jurisdiction remains. There is no reason for the prisoner to be on bail since there is no right of appeal. The only course available is to apply for an Order for Review of Detention. That application, however, is an application, like the writ of *habeas corpus*, for the prisoner to be produced before the High Court and have his detention explained and justified. It follows that only a person who is detained may lawfully and properly ask for his detention to be explained.

5 For the reasons above, I granted the Public Prosecutor's application. I revoked the order for bail and substituted it with the order that the respondent be remanded at the Institute of Mental Health as was permissible under s 11(8) of the Extradition Act. The Public Prosecutor has no objection to the substituted order in view of the medical reasons advanced on behalf of the respondent.