

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 56

Court of Appeal / OAC No 2 of 2024

Between

Masoud Rahimi bin Mehrzad

... Applicant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing — Stay of execution]

TABLE OF CONTENTS

FACTS AND HISTORY OF PROCEEDINGS.....	2
THE TRIAL	2
THE APPEAL	3
POST-APPEAL APPLICATIONS	4
THE PARTIES' CASES.....	8
MR MASOUD'S CASE	8
<i>Ground 1</i>	9
<i>Ground 2</i>	9
<i>Ground 3</i>	10
THE PROSECUTION'S CASE	13
<i>Ground 1</i>	14
<i>Ground 2</i>	15
<i>Ground 3</i>	16
THE DECISION OF THE COURT	17
GROUND 1	18
GROUND 2	19
GROUND 3	20
CONCLUSION.....	21

This judgment is subject to final editorial corrections to be approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Masoud Rahimi bin Mehrzad

v

Public Prosecutor

[2024] SGCA 56

Court of Appeal — OAC No 2 of 2024
Tay Yong Kwang JCA
27 November 2024

28 November 2024

Tay Yong Kwang JCA:

1 This is an application under Division 4 of Part 5 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the “**SCJA**”) by Mr Masoud Rahimi bin Mehrzad (“**Mr Masoud**”), a prisoner awaiting capital punishment (“**PACP**”). It is an application for permission to make a post-appeal application in a capital case or a “**PACC**” application. The execution of Mr Masoud is scheduled for tomorrow, 29 November 2024.

2 In this application, Mr Masoud seeks the following orders:

- (1) That the execution of the applicant scheduled for 29 November 2024 be stayed pending the determination of this permission application and any consequent PACC application.
- (2) That permission be granted to file a PACC application seeking a prohibiting order of the execution of the applicant scheduled for 29 November 2024, and a quashing order of the notice of execution dated 22 November 2024.

- (3) That a stay of execution be granted such that the Applicant may have a reasonable time period to file a leave application under s 394H of the Criminal Procedure Code;
- (4) Any other relief this Honourable Court deems fit.

Facts and history of proceedings

The trial

3 Mr Masoud was tried jointly in the High Court with Mr Mogan Raj Terapadisamy (“**Mr Mogan**”) in CC 14/2013 on two charges each under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “**MDA**”). Mr Masoud was charged with (a) a capital charge for possession of not less than 31.14g of diamorphine for the purposes of trafficking under s 5(1) read with s 5(2) of the MDA; and (b) a non-capital charge for possession of 77g of methamphetamine for the purposes of trafficking under s 5(1) read with s 5(2) of the MDA. Mr Mogan was charged with (a) a non-capital charge for trafficking in not less than 14.99g of diamorphine under s 5(1) of the MDA; and (b) a non-capital charge for trafficking in 77g of methamphetamine under s 5(1) of the MDA.

4 The crux of Mr Masoud’s defence at the trial was that he had no knowledge of the drugs found in his possession, let alone their nature. The core of his defence was that he had been framed by an illegal moneylending syndicate that he was involved in. In short, Mr Masoud explained that he was originally a driver for “Arab”. After Arab vanished, Arab’s boss invited Mr Masoud to join the syndicate. Mr Masoud’s role was to collect money wrapped in bundles and deliver them to “Alf”. Alf would then instruct Mr Masoud to deliver the bundles elsewhere. It was Alf who had instructed Mr Masoud to collect bundles from Mr Mogan that turned out to be drugs, and Alf who had placed bundles of drugs in Mr Masoud’s car.

5 On 18 November 2013, Mr Masoud and Mr Mogan were convicted by the High Court on their respective first charges. The trial judge found that there was strong evidence that Mr Masoud knew he was dealing with drugs. Among other evidence, Mr Masoud’s notebook and text messages contained extensive references to drugs. Mr Masoud’s claim that he was framed by a syndicate was both incredible and belated.

6 On 19 October 2015, the trial judge passed the mandatory death sentence on Mr Masoud. Mr Masoud was found not to be a “courier” within the meaning of s 33B(2)(a) of the MDA and was not issued with a certificate of substantive assistance by the Public Prosecutor pursuant to s 33B(2)(b): see *Public Prosecutor v Masoud Rahimi bin Mehrzad and another* [2015] SGHC 288 at [26]. Mr Mogan was sentenced to the mandatory minimum of 20 years’ imprisonment and 15 strokes of the cane.

The appeal

7 On 26 October 2015, Mr Masoud appealed against his conviction and sentence in CA/CCA 35/2015 (“CCA 35”). Mr Masoud submitted that the presumption of knowledge in s 18(2) of the MDA could be rebutted if the accused could raise a reasonable doubt as to his knowledge of the nature of the drugs. He argued that he had rebutted the presumption of knowledge in s 18(2) of the MDA successfully. Mr Mogan also appealed against his conviction and sentence in CA/CCA 36/2015.

8 On 10 October 2016, the appeals were dismissed by the Court of Appeal. The Court of Appeal agreed with the trial judge that Mr Masoud had failed to rebut the presumption of knowledge. Mr Masoud’s notebook entries and text messages contained references to drugs and contradicted his claim that he had been framed by an illegal moneylending syndicate. The Court of Appeal also

held that Mr Masoud’s failure to make earlier mention of his alleged involvement in the moneylending syndicate and the possible set up by a syndicate was another factor that undermined the credibility of his defence. The Court of Appeal therefore dismissed Mr Masoud’s appeal: see *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 (“*Masoud (Appeal)*”).

9 On 5 July 2019, Mr Masoud’s petition to the President for clemency was rejected after due consideration of the petition and on the advice of the Cabinet.

Post-appeal applications

10 On 2 July 2021, Mr Masoud joined 12 other PACPs in filing HC/OS 664/2021 (“**OS 664**”), an application under O 53 r 1 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) for permission to commence judicial review proceedings. It had emerged that correspondence belonging to Mr Masoud (along with those of other prisoners) had been forwarded by the Singapore Prison Service (the “SPS”) to the Attorney-General’s Chambers (the “AGC”). OS 664 sought permission to bring an application that would seek, among other reliefs, a declaration that the SPS and the Attorney-General had breached confidence in respect of some of the inmates’ personal correspondence. On 28 October 2021, the High Court granted permission for OS 664 to be withdrawn.

11 On 13 August 2021, Mr Masoud joined 16 other PACPs in filing HC/OS 825/2021 (“**OS 825**”) against the Attorney-General and against officers in the Central Narcotics Bureau (the “CNB”). The applicants sought declaratory relief, alleging discrimination against them by reason of their ethnicity and for violation of their rights under Arts 9(1) and 12(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint). They also alleged that the Attorney-General had exceeded his powers in prosecuting them for capital drug

offences. OS 825 was dismissed by the High Court on 2 December 2021: *Syed Suhail bin Syed Zin and others v Attorney-General* [2022] 4 SLR 934 at [107]. No appeal was filed.

12 On 11 October 2021, Mr Masoud, together with other prisoners, filed an application in HC/OS 1025/2021 (“**OS 1025**”) against the Attorney-General for permission to commence committal proceedings against the Minister for Law and Home Affairs. OS 1025 was struck out in its entirety on 16 November 2021. No appeal was filed.

13 On 25 February 2022, Mr Masoud joined 12 other PACPs in filing HC/OS 188/2022 (“**OS 188**”), an application against the Attorney-General seeking civil remedies in respect of the improper handling of the PACPs’ personal correspondence. On 1 July 2022, the High Court dismissed OS 188, save for an award of nominal damages of \$10 awarded to three of the applicants in OS 188 for copyright infringement. Mr Masoud was not one of them.

14 On 29 July 2022, the applicants in OS 188 filed an appeal in CA/CA 30/2022 (“**CA 30**”). On 11 October 2024, CA 30 was allowed in part, with the Court of Appeal granting some of the declaratory relief sought: *Syed Suhail bin Syed Zin and others v Attorney-General* [2024] SGCA 39. As it emerged during the course of hearing CA 30 that the appellants in CA 30 were also seeking to impugn the validity of their convictions, the Court of Appeal gave permission to the appellants in CA 30 to file criminal motions seeking relief under the criminal law to the extent that such motions arose from the disclosed correspondence. Mr Masoud then filed CA/CM 50/2023 (“**CM 50**”) to seek permission to file an application to review his appeal in CCA 35.

15 On 1 August 2022, Mr Masoud joined 23 other PACPs in filing HC/OC 166/2022 (“**OC 166**”) against the Attorney-General and the Government of Singapore to challenge the constitutionality of the court’s power to order costs in criminal proceedings. OC 166 was struck out in its entirety by the High Court on 3 August 2022.

16 On 3 August 2022, the applicants in OC 166 filed an appeal in CA/CA 31/2022 (“**CA 31**”). On 4 August 2022, CA 31 was dismissed by the Court of Appeal: *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 at [52].

17 On 26 September 2023, Mr Masoud joined 35 other PACPs in filing HC/OA 987/2023 (“**OA 987**”), seeking declarations that certain provisions that were to be introduced by s 2(b) of the Post-appeal Applications in Capital Cases Act 2022 (No 41 of 2022) (the “**PACC Act**”) to the SCJA – s 60G(7)(d) and s 60G(8) of the SCJA – were void for being inconsistent with Arts 9 and 12 of the Constitution of the Republic of Singapore (2020 Rev Ed) (the “**Constitution**”). OA 987 was struck out by the High Court on 5 December 2023 on the basis that the provisions had not yet come into force and did not affect the applicants in OA 987: see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 4 SLR 331.

18 On 5 December 2023, as mentioned above, Mr Masoud filed CM 50 seeking permission under s 394H(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the “**CPC**”) to review his appeal in CCA 35. Shortly prior to the hearing of CM 50, Mr Ong Ying Ping then counsel for Mr Masoud, sought and was granted a discharge as counsel. CM 50 was dismissed by the Court of Appeal on 1 August 2024: see *Pausi bin Jefridin v Public Prosecutor and other matters* [2024] 1 SLR 1127 (“*Pausi*”). The Court of Appeal noted that Mr

Masoud was convicted on the basis of his actual knowledge that the bundles in his possession contained drugs and that the test of wilful blindness was irrelevant to his case.

19 On 5 January 2024, the applicants in OA 987 filed an appeal in CA/CA 1/2024 (“CA 1”). CA 1 was dismissed by the Court of Appeal on 27 March 2024: *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 1 SLR 414. Subsequently, after the relevant challenged provisions came into force, Mr Masoud joined other PACPs in filing another application on similar grounds as in OA 987 (see below at [22]).

20 On 28 March 2024, Mr Masoud and 35 other PACPs filed HC/OA 306/2024 (“OA 306”), seeking a declaration that the policy of the Legal Assistance Scheme for Capital Offences Assignment Panel not to assign counsel for any post-appeal application was inconsistent with Art 9 of the Constitution and for an order for damages. OA 306 was struck out on 20 May 2024: *Iskandar bin Rahmat and others v Attorney-General* [2024] 5 SLR 1290 at [43].

21 On 29 May 2024, the applicants in OA 306 filed an appeal in CA/CA 38/2024 (“CA 38”) against the striking out. CA 38 was dismissed by the Court of Appeal on 9 September 2024.

22 On 19 September 2024, Mr Masoud together with 30 other PACPs filed HC/OA 972/2024 (“OA 972”), seeking declarations that ss 60G(7)(d), 60G(8), 60H(6) and 60I(1) of the SCJA and s 313(2) of the CPC are void for being inconsistent with Arts 9 and 12 of the Constitution. As mentioned earlier, these provisions were introduced by the PACC Act. At a case conference for OA 972 held on 24 September 2024, Mr Masoud confirmed that he was not challenging his conviction or sentence in OA 972 and would file a separate application if he

was seeking to challenge his conviction and sentence. The Attorney-General has taken out an application to strike out OA 972. As at the date of this judgment, OA 972 is pending determination.

23 On 15 November 2024, the President issued the order for Mr Masoud to be executed on 29 November 2024. Accordingly, the Warrant of Execution was issued on 18 November 2024.

24 On 22 November 2024, Mr Masoud was notified about the date of execution. On 27 November 2024, Mr Masoud filed the present application.

The parties' cases

Mr Masoud's Case

25 Mr Masoud seeks a stay of execution on the following three grounds:

- (a) First, he has lodged a clemency petition to the President on 22 November 2024 as a result of the declarations awarded by the Court of Appeal in CA 30 on 11 October 2024 and requires sufficient time to take advice on the outcome of the petition (“**Ground 1**”);
- (b) Second, he has lodged a complaint to the Law Society of Singapore against his former counsel in CM 50, Mr Ong Ying Ping, in respect of the lawyer’s handling of CM 50 (“**Ground 2**”); and
- (c) Third, he has fresh evidence to be adduced in an application for review of the dismissal of his appeal against conviction and sentence (“**Ground 3**”).

Ground 1

26 The Court of Appeal in CA 30 granted a declaration that the Attorney-General committed a breach of confidence by the disclosure and retention of Mr Masoud's confidential information. This was an entirely unprecedented situation in which government bodies were found to have acted unlawfully and violated his rights. Mr Masoud is therefore seeking clemency on this basis and is asking that his death penalty be commuted to life imprisonment.

27 Mr Masoud's former counsel, Mr Ong Ying Ping, advised him on 16 October 2024 to file such a clemency petition and asked for legal fees of \$3,500 to prepare the petition. As Mr Masoud could not afford the legal fees, he needed time to prepare the petition himself.

28 Mr Masoud's sister approached Mr Derek Wong of Phoenix Law Corporation around 16 November 2024 to arrange to visit Mr Masoud in prison. Mr Derek Wong visited Mr Masoud on 21 November 2024 and was given instructions to file the petition on Mr Masoud's behalf. The petition was filed on 22 November 2024.

29 Mr Masoud is also concerned that the parties who will advise the President on the clemency petition are the same parties who had committed the unlawful act against him. He therefore should be given reasonable opportunity to seek legal advice on the outcome of the petition.

Ground 2

30 Arising from the disclosures made in CA 30, Mr Ong Ying Ping acted for Mr Masoud in CM 50. His family paid Mr Ong Ying Ping \$5,000 to do so.

However, three days before the hearing, Mr Ong Ying Ping wrote to the Court to discharge himself as counsel.

31 Mr Ong Ying Ping claimed to the Court that Mr Masoud intended to act in person in order to raise further arguments at the hearing of CM 50. Mr Ong Ying Ping pressurised him into signing a notice to act in person on 29 July 2024, three days before the hearing in Court, claiming that he was overwhelmed and unprepared for the hearing and that, even if Mr Masoud did not sign the said notice, he would be discharging himself as counsel anyway and would be unable to take back the case subsequently.

32 Mr Masoud submits that Mr Ong Ying Ping misled him as well as the Court of Appeal as to the nature and the reasons for the discharge. As a result, Mr Masoud “felt strongly prejudiced” by Mr Ong Ying Ping’s conduct in CM 50. This included Mr Ong Ying Ping’s failure to collect evidence on Mr Masoud’s behalf.

33 Accordingly, Mr Masoud submitted a complaint to the Law Society against Mr Ong Ying Ping on 11 November 2024. Mr Masoud claims that he has a right to be vindicated through this complaint and might be required to provide further testimony. It would therefore be “grossly unjust”, he says, to execute him before the disciplinary proceedings.

Ground 3

34 Mr Masoud states that he intends to bring an application for review of his appeal against conviction and sentence based on new evidence that his family helped to collect and will help to collect. The new evidence relates to a statutory declaration filed by his step-sister, Ms Natasha binte Jumaat, dated 25

November 2024. His step-sister was previously afraid to provide evidence for fear of being implicated or involved in Mr Masoud's case.

35 In her statutory declaration, the step-sister states that around August 2009, Mr Masoud approached her for a job recommendation as his National Service allowance was terminated due to his long absence on medical leave. She suggested that Mr Masoud ask her then-boyfriend, Mr Abdullah bin Mohammad Kunhi, whom she knew as "Arab", for a job as a driver. She arranged a meeting for both men to discuss this.

36 The step-sister states that she was aware that Mr Masoud worked as a driver for Arab and was paid between \$100 to \$150 each day. There were times when Mr Masoud drove Arab and the step-sister to clubs, shopping malls and hospitals. He also drove them to Arab's house in Choa Chu Kang where the step-sister used to stay with Arab.

37 The step-sister was aware that Arab was involved in some unlawful activities although she did not ask for details. Arab only told her that he was involved in moneylending with his Singapore and Malaysian boss at JMS, a debt collecting company.

38 The step-sister states further in her statutory declaration that she and Arab consumed the drug known as Ice together. She does not know the source of that drug. She has already served her sentence for consuming Ice.

39 Around December 2009 or January 2010, she broke up with Arab and ceased staying with him. However, she still met Mr Masoud occasionally when he went to Alf's place at Chestnut Ville. She had met Alf while she was working at "Mr Boss" karaoke lounge and used to "hang out" with Alf because she, Alf

and his girlfriend were friends. Sometime in February 2010, Alf and Mr Masoud started to be in frequent contact with each other. They had a working relationship and it had something to do with the Malaysian bosses whom Arab was working for earlier. She knew that Mr Masoud would rent different cars before his arrest.

40 The step-sister explains that she did not come forward to give evidence earlier as she feared that she would be implicated in Mr Masoud’s case. Due to her incarceration in 2011 to 2012, she was not able to contact Mr Masoud.

41 The second piece of new evidence that Mr Masoud wishes to adduce is the testimony of the abovementioned Arab. Mr Masoud’s sister, Sarah, engaged a lawyer, Mr Derek Wong (of Phoenix Law Corporation), to visit Arab to see if Arab was willing to provide evidence for Mr Masoud. Arab was in prison and consented to Mr Derek Wong visiting him on 23 July 2024. Arab informed Mr Derek Wong that he was willing to provide evidence.

42 However, before the contents of Arab’s affidavit could be confirmed and commissioned, Arab was sentenced to 14 years and six month’s imprisonment and 22 strokes of the cane on 11 October 2024 by a District Court. The prison authority informed Mr Derek Wong that Arab would be allowed visits only from 2 December 2024 onwards.

43 Mr Masoud states that Arab’s testimony pertains broadly to information about Alf and corroborates Mr Masoud’s testimony given during his trial. His step-sister’s evidence would show that Alf is not “‘a character conjured up by Masoud in aid of his own defence’ (at [68]), a view that was unfortunately formed” by the Court of Appeal in dismissing his appeal in CCA 35.

44 Acknowledging that CM 50 was his previous application for permission to review the dismissal of his appeal in CCA 35, Mr Masoud states that he intends to ask the Court of Appeal to exercise its inherent powers to hear his intended second application in the light of the new evidence. He therefore asks for a stay of execution for a reasonable period of time in order to procure the further evidence.

45 Finally, Mr Masoud explains why his present application could not have been brought earlier. He states that he received the notice of execution on 22 November 2024 and the material provided in his affidavit here could not have been produced earlier as it did not exist then.

The Prosecution’s Case

46 This morning, the Prosecution filed an affidavit by Senior Assistant Director Tan Chun-Yuan Avryl (“**SAD Tan**”) of SPS. SAD Tan points out that the correspondence exhibited in Mr Masoud’s affidavit was not in relation to Mr Derek Wong’s purported visit to Arab on 23 July 2024. Instead, the letters pertained to the lawyer’s application to interview Mr Masoud.

47 SAD Tan also states that Mr Derek Wong did not interview Arab on 23 July 2024. According to SPS’s records, the lawyer first interviewed Arab on 12 March 2024 and again on 15 July 2024. On 15 October 2024, the lawyer submitted a request to SPS for a potential interview with Arab. SPS replied on 22 October 2024. On 22 November 2024, the lawyer wrote to SPS for assistance to book a tele-interview with Arab. SPS replied the same day stating that Arab did not have access to a tele-interview facility and therefore any interview would have to be conducted face-to-face. SPS has not received any further request from the lawyer for an interview with Arab.

48 SAD Tan states that it is not true that Arab is allowed to receive interviews only from 2 December 2024. SPS officers did not inform Mr Derek Wong at any point in time that Arab would be allowed interviews only from 2 December 2024 onwards. Arab is not and has not been prohibited from receiving interviews.

49 The Prosecution's written submissions, also filed this morning, dealt firstly with the factual and legal issues raised at Mr Masoud's trial and at his appeal. The judgments of the trial Judge and of the Court of Appeal in CA 35 have been summarised sufficiently earlier in this judgment and I will refer to the portions of the Court of Appeal's judgment that I consider necessary later in this judgment.

Ground 1

50 The Prosecution notes that the President's clemency power is a legal power of an extraordinary character. Art 22P of the Constitution prescribes specific procedural safeguards for the conduct of the clemency process in death penalty cases. Under Art 22P, an offender does not possess a legal right to file a clemency petition, much less a legal right to file further clemency petitions after the President has decided on a petition. In this case, as mentioned earlier in this judgment, the President had informed Mr Masoud on 5 July 2019 that the death sentence should stand. The requirements in Art 22P were complied with and it is well established that this clemency power is not justiciable on the merits.

51 The Prosecution rejects the suggestion that there could be a conflict of interest in having the Cabinet advise the President in the exercise of his clemency power. The mere fact that SPS was found to have acted unlawfully cannot in any way stand as proof that members of the Cabinet or the

Government would be biased when considering the wholly separate issue of whether to grant clemency. As the clemency process has run its course here and since Mr Masoud has no legal right to present further petitions, he does not have a right to a further period to take advice after the President decides on the further petition (the so-called *Pannir Selvam* period named after the case of *Pannir Selvam a/l Pranthaman v Public Prosecutor* CA/CM 6/2019).

52 Further, Mr Masoud was advised by Mr Ong Ying Ping on 16 October 2024 to file a fresh petition for clemency. However, it was only on 22 November 2024, the date of notification of execution, that the further petition was submitted. Mr Masoud's affidavit gives the inaccurate impression that Mr Derek Wong only came into the picture after Mr Masoud's sister reached out to him on 16 November 2024. It is clear that the lawyer interviewed Arab in prison as far back as 12 March 2024 and by 19 July 2024, the lawyer was asked by the sister to interview Mr Masoud.

53 The present case is similar to what happened in *Roslan bin Bakar v Attorney-General* [2024] SGCA 51 ("*Roslan*"). It is clear that Mr Masoud had no lack of legal advice in the backgrounds and that the further petition and this application were held back deliberately to create an artificial crisis of time once notice of execution was given. There was intentional delay in filing this application.

Ground 2

54 The Prosecution relies again on *Roslan* (at [51]-[53]) as the background facts are similar save that the complaint to the Law Society in this case was lodged on 11 November 2024. The Prosecution submits that every application is fact-centric and on the facts here, the complaint against Mr Ong Ying Ping cannot be considered a relevant pending proceeding.

Ground 3

55 The Prosecution refers to *Moad Fadzir bin Mustaffa v Public Prosecutor* [2024] 1 SLR 677 at [27]–[28] where the Court of Appeal emphasised that the court’s inherent power to review concluded criminal appeals must not be used to justify repeat applications lest the very instrument for ensuring that there is no miscarriage of justice becomes perverted into an instrument for the abuse of the process of justice. The inherent power should only be invoked as a last resort and only in the most exceptional of cases. Specifically, the exercise of the court’s inherent power under s 394J(1)(b) of the CPC will only be warranted where the material put forth by the applicant renders the relevant facts practically irrefutable and those facts show conclusively that there has been a miscarriage of justice on the face of the record.

56 The Prosecution argues that Mr Masoud’s step-sister’s testimony could have been adduced in court with reasonable diligence at the trial or at the appeal. There is also an unexplained delay in filing the application for permission for review where Arab’s purported testimony is concerned.

57 In respect of the step-sister’s statutory declaration, if what she has stated is true, there would have been nothing to fear about being implicated in this case. Her step-brother’s life was on the line and, ostensibly, she could validate his account.

58 In CM 50, Mr Masoud’s submissions asserted that his step-sister had provided written statements to the counsel who represented him at the appeal but that the statements were not tendered in court. This is materially at odds with what is being claimed in the statutory declaration here about the step-sister not having come forward earlier. The step-sister’s incarceration in 2011-2012 does not explain why she could not testify in Mr Masoud’s defence at his trial

which commenced only in September 2013. Further, what is asserted in the statutory declaration about Alf is inconsistent with what Mr Masoud said in his statements and at the trial.

59 Apart from all this, the step-sister's evidence would show at best that Alf was not a fictional character and that Mr Masoud did work for Alf. Mr Masoud's conviction rested on multiple strands of evidence which supported the finding that Mr Masoud was involved in drug trafficking.

60 In respect of Arab, there is no admissible evidence as to Arab's account which Mr Masoud states will broadly pertain to the information about Alf and corroborate his testimony at the trial. Since Mr Derek Wong interviewed Arab since 12 March 2024, there is no justifiable reason why Arab's evidence could not be put on affidavit if it is so important to Mr Masoud's case. Further, Mr Derek Wong has not stated on affidavit what Arab purportedly told him during their meetings in prison.

61 The court's inherent power will not be invoked simply because an applicant puts forward a different factual narrative or claims that certain allegations should be examined further. Mr Masoud's claims about what Arab may say afford no reasonable prospect of success.

62 Based on the above submissions, the Prosecution submits that this application should be dismissed.

The decision of the court

63 The matters that the Court of Appeal must consider in deciding whether to grant permission to file a PACC are set out in s 60G(7) of the SCJA, which states as follows:

Application for permission to make PACC application

...

(7) In deciding whether or not to grant an application for PACC permission, the Court of Appeal must consider the following matters:

- (a) whether the PACC application to be made is based on material (being evidence or legal arguments) that, even with reasonable diligence, could not have been adduced in court before the relevant date;
- (b) whether there was any delay in filing the application for PACC permission after the PACP or counsel for the PACP obtained the material mentioned in paragraph (a) and the reasons for the delay;
- (c) whether subsection (4) is complied with;
- (d) whether the PACC application to be made has a reasonable prospect of success.

64 Section 60G(7)(c) of the SCJA refers to whether the applicant in a PACC application for permission has complied with the requirement in s 60G(4) that he or she must file written submissions in support of the application and such other documents as are prescribed in O 24A r 2 of the Rules of Court 2021 (“**ROC**”), within such periods as are prescribed in O 24A r 2 of the ROC. The considerations in s 60G(7) of the SCJA mirror the considerations that the appellate court must consider under s 394H(6A) of the CPC in deciding whether or not to grant an application for permission to make a review application.

Ground 1

65 The Registry of the Supreme Court was informed this morning that the President will not be exercising the power conferred by Art 22P of the Constitution in relation to Mr Masoud’s further petition for clemency. The death sentence therefore stands.

66 I agree with the Prosecution’s contentions that there is certainly no right to file a second or any subsequent petitions for clemency once the PACP’s first petition has been rejected by the President. It follows that there is no right to a further period of time after the second or subsequent petitions are rejected to take advice or to contemplate further action on the rejection.

67 In CM 50, the Court of Appeal held that none of the disclosed correspondence could have potentially affected the applicants’ criminal proceedings in relation to their convictions and/or sentences. This was despite the applicants’ submissions that the disclosed correspondence tainted the legitimacy of the convictions and sentences (see [23]–[26] of *Pausi*). In relation to Mr Masoud’s application in particular, the earliest disclosure of his correspondence to the AGC took place on 30 January 2019, way after his conviction in November 2013 and his sentencing in October 2015, and after his appeal in CCA 35 was dismissed in October 2016. The Court of Appeal emphasised (*Pausi* at [26]) that the disclosures could not have affected or undermined the integrity of the convictions or appeals therefrom. At [38] and [39], the Court of Appeal reiterated that the disclosed correspondence did not disclose sufficient cause for review.

68 Ground 1 therefore has no reasonable prospect of success.

Ground 2

69 Mr Ong Ying Ping’s conduct in the seven criminal motions before the Court of Appeal (with CM 50 being one of the seven) was also dealt with in CM 50 (see *Pausi* at [15]–[22] and [27]). The Court of Appeal heard the accusations by the respective applicants that it was Mr Ong Ying Ping who had chosen to discharge himself. Nevertheless, the court considered it immaterial whether the decision to discharge as counsel was made by the applicants or by Mr Ong Ying

Ping himself. The court was satisfied that the discharge was justified and granted it. Clearly, there was no misleading of Mr Masoud or of the Court of Appeal by Mr Ong Ying Ping. In any case, the court considered the discharge justified after hearing the applicants.

70 Mr Masoud complains about Mr Ong Ying Ping's conduct in CM 50 up to 1 August 2024. However, as shown in his affidavit, Mr Ong Ying Ping remains as his counsel in other related matters even up to 16 October 2024. Mr Masoud took no action until 11 November 2024 when he lodged the complaint to the Law Society. All this shows that the complaint was nothing more than an attempt to delay the carrying out of the sentence. Even if Mr Ong Ying Ping is sanctioned subsequently, that will not affect or undermine the integrity of Mr Masoud's conviction and appeal in any aspect.

71 Accordingly, Ground 2 also has no reasonable prospect of success.

Ground 3

72 Mr Masoud has not explained what efforts he took to locate his step-sister for the trial, the appeal and the long intervening period before her statutory declaration was given. In any case, the step-sister's evidence can only show that the person named Alf existed and that he was in some working relationship with Mr Masoud. She would not be able to say whether that relationship extended to dealing with drugs.

73 Mr Masoud was convicted and his appeal dismissed because his notebook entries and the text messages in his mobile phone contained strong evidence that he knew that he was dealing in drugs (see *Masoud (Appeal)* at [61]). His claim of a set-up by the moneylending syndicate was rejected not because Alf was missing at the trial and at the appeal. The Court of Appeal held

that Mr Masoud was not a credible witness and was, at the very least, shutting his eyes from wanting to know what could have been in the bag that contained drugs (*Masoud (Appeal)* at [72]). The court also considered his claim of a set-up to have been developed over time in a last-ditch attempt to bolster his defence. He failed to mention his defence at any point prior to the trial (*Masoud (Appeal)* at [70]).

74 The purported new evidence will not affect Mr Masoud’s conviction and sentence or the dismissal of his appeal. Ground 3 therefore also has no reasonable prospect of success.

Conclusion

75 There is clearly no justification to stay the scheduled execution and no basis to grant Mr Masoud’s present application for permission to file a PACC or an application for permission to review under the Criminal Procedure Code. Having considered all the affidavits and the submissions filed in this application, I dismiss this application summarily without the need for an oral hearing pursuant to s 60G(8) of the SCJA.

Tay Yong Kwang
Justice of the Court of Appeal

The applicant in person;
Wong Woon Kwong SC and Lim Shin Hui (Attorney-General’s
Chambers) for the respondent.