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

[2025] SGHC 192

Magistrate's Appeal No 9074 of 2024

Between

Katchu Mohideen Bazeer Ahamed

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Sentencing — Appeals]
[Constitutional Law — Equal protection of the law — Whether s 106A of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) infringed Article 12 of the Constitution]
[Constitutional Law — Fundamental liberties — Right to life and personal liberty — Whether s 106A of the Criminal Procedure Code Cap (Cap 68, 2012 Rev Ed) infringed Article 9 of the Constitution]

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Tay Yong Kwang JCA:

Introduction

1 The appellant, Mr Katchu Mohideen Bazeer Ahamed, is a Singapore citizen and is presently 43 years old. In 2019, he operated a scheme in which he recruited Singaporean bailors for foreign accused persons. The foreign accused persons or their next of kin would pay a fee to the appellant for doing this.

2 Three charges were preferred against the appellant for offences under s 106A(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") for entering into agreements with third parties to indemnify the said third parties for any liability that they might incur for acting as sureties in bail bonds for foreign accused persons. The appellant initially claimed trial to all three charges. However, on the first day of hearing, he pleaded guilty to one charge in MAC-900780-2022 and consented to the other two charges being taken into

consideration for the purposes of sentencing. The District Judge (the "DJ") imposed a custodial sentence of six weeks' imprisonment (see *Public Prosecutor v Katchu Mohideen Bazeer Ahamed* [2024] SGMC 16 (the "GD")).

3 In this appeal in Magistrate's Appeal No 9074 of 2024 ("MA 9074"), the appellant sought to argue that s 106A of the CPC was unconstitutional or, alternatively, that his sentence of imprisonment be altered to a fine. In the appellant's earlier written submissions, he had asked for the imprisonment term of six weeks to be reduced by three to four weeks. I dismissed the appellant's appeal for the reasons set out below.

The charges and statutory provisions

4 The charge against the appellant (the "Charge") states:

> You are charged that you, on or about 7 November 2019, did knowingly enter into an agreement, with one N Ammaran (NRIC No. SXXXXXXXX), indemnifying N Ammaran against any liability which he may incur as a surety to a bail bond, to *wit*, you agreed with N Ammaran that you would indemnify him of any liability which he may incur by acting as a surety to a bail bond for one Gnanaprakasam Vetriselvan (FIN No. GXXXXXXXX) (bail amount: $5,000 in one surety), and you have thereby committed an offence punishable under Section 106A(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

5 The two remaining charges which were taken into consideration for the purposes of sentencing were similar to the above charge. The only differences were the dates of the offences (13 March 2019 and 4 November 2019), the foreign accused persons involved and the bail amounts.

6 Section 106A of the CPC provides:

> **Prohibition against agreements to indemnify surety, etc.**
>
> **106A.**—(1) Any agreement (whether made before, on or after the date of commencement of section 24 of the Criminal Justice

> Reform Act 2018) indemnifying or purporting to indemnify any person against any liability which that person may incur as a surety to a bail bond is void.
>
> (2) Any person who, on or after the date of commencement of section 24 of the Criminal Justice Reform Act 2018, knowingly enters into an agreement mentioned in subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine or to imprisonment for a term not exceeding 3 years or to both.
>
> (3) An offence under subsection (2) is committed —
>
> > (*a*) whether the agreement is entered into before or after the person to be indemnified becomes a surety;
> >
> > (*b*) whether or not the person to be indemnified becomes a surety; and
> >
> > (*c*) whether the agreement contemplates compensation in money or money's worth.

Section 106A of the CPC was enacted by the Criminal Justice Reform Act (Act 19 of 2018) and came into operation on 31 October 2018.

7 As the appellant's arguments on appeal involved s 106 of the CPC, the section is also set out below:

> **Security instead of surety**
>
> **106.** When a court or police officer requires a person to sign a bond with one or more sureties, the court or officer may (except in the case of a bond for good behaviour) instead permit him to enter into his own personal bond and provide security acceptable to the court or officer.

The background facts

8 The appellant admitted without qualification the facts set out in the following Statement of Facts. The two documents, Annex A and Annex B, referred to in the Statement of Facts are not necessary for our purposes and are therefore not reproduced here:

1. The accused is Katchu Mohideen Bazeer Ahamed ("**Bazeer**"), a male 40-year-old (D.O.B. XX July 1982) Singaporean bearing NRIC number SXXXXXXXX.

2. At the material time, the accused was working for M/S Arshanker Law Chambers ("**the law firm**"). Bazeer was working part-time as a personal assistant to Revi Shanker ("**Revi**"), the sole proprietor for the said law firm.

3. Bazeer also recruited his friend, Mohamed Afzal s/o Latiff Abdul Kader ("**Afzal**") (NRIC: SXXXXXXXX), to work for Revi.

BACKGROUND FACTS AS TO THE SCHEME

4. Bazeer met Revi sometime in 2006 at a restaurant Bazeer used to work in. They became good friends and started to meet regularly. Sometime in the middle of 2017, Bazeer brought a friend to Revi for legal advice. Revi then asked Bazeer if he wished to earn extra income. Revi told Bazeer that his role would be to, *inter alia*, scout for bailors for Revi's foreign clients. Revi told Bazeer that Bazeer could charge his client at least $1,000 for each bailor that Bazeer scouted. Bazeer agreed and started work for Revi immediately.

5. When Bazeer commenced work with Revi, one other person, Tarmmar Razu was already working for Revi, and assisting Revi with scouting for bailors.

6. On Revi's instructions, Bazeer would go to the law firm whenever Revi required him to find a bailor for a client. Bazeer would thereafter call his own friends to see if anyone was willing to be a bailor.

7. The arrangement between Bazeer and Revi was that Revi would refer the foreign client to Bazeer. Oftentimes, the foreign client would not be the accused person (who would be in remand) but the next of kin of the accused person. Bazeer would negotiate the rate with the client in the law firm after Revi introduced the client to Bazeer and charge the client a general fee of about $1,000, which would be split between Bazeer and the bailor. It was up to Bazeer to decide how much to pay each bailor. The client would either pay Bazeer the fee up front in the law firm in front of Revi or pay the said monies outside of Court along with the bail monies (if the bail was 'cash' bail). The client or next of kin sometimes would also pay the fee to Revi directly and Revi would pay it to Bazeer thereafter. Bazeer would be in control of the monies paid by the accused persons and/or their next of kin. Revi would provide Bazeer the following information:

a. Whether the bail was 'property' or 'cash' bail;

b. The quantum of the bail amount; and

c. Contact number of the next of kin or friends of the accused persons for Bazeer to speak to them.

8. Revi would also extend all bail bond documents to Bazeer as well as the Integrated Case Management System ("**ICMS**") information of the accused persons. In addition to his share of the fee paid to him for finding a bailor, Bazeer was also paid $300 to $500 per month by Revi, depending on the number of bailors he assisted Revi to scout.

9. Sometime in late February or early March 2018, Bazeer met Afzal at People's Park Centre. Bazeer asked Afzal if he could become a bailor or look for bailors for him. Bazeer said that the accused persons would pay him or the bailors for doing so. Bazeer also said that Afzal could receive between $700 to $750 which would be split between Afzal and the bailor. During their next meeting, Afzal watched as Bazeer briefed a bailor on the process of how the bailors would bail out accused persons, and what information the bailors needed to memorise to do so.

10. On or around late March 2018, Bazeer contacted Afzal *via* WhatsApp to find a bailor for him in exchange for $700, which Afzal could split with the bailor. Within two to three hours, Afzal managed to find a bailor. The said bailor was Afzal's cell mate from Prisons. From the $1000 paid to Bazeer, Bazeer thereafter transferred $700 into Afzal's bank account and kept the $300. Out of the $700, Afzal said that he would pay $300 to the bailor and keep $400. Bazeer told Revi about this arrangement, and Revi replied that he was not concerned with how much was given to the bailor. Thereafter, the bailor, Afzal, and Bazeer met outside People's Park Centre. Bazeer briefed the bailor on what he needed to do. After the accused person for the case was successfully bailed out with Afzal's assistance, Bazeer officially recruited Afzal to help Revi to scout for bailors.

11. Pursuant to the arrangement between Bazeer and Afzal to scout for bailors for Revi, Afzal assisted to keep records of all the bailors they scouted for Revi's clients in an excel sheet. A copy of the said records is attached as **Annex A**. Afzal maintained the said records so that both of them could keep track of when the case for each accused person they recruited a bailor for had concluded and to monitor the status of their cases and the next court event. Revi would update Bazeer about the accused persons' cases and whether or not they had been convicted, so that the bailor could be released from his bond and stand bail for other accused persons. Bazeer would then relay the information to Afzal to update the records. The ICMS information would also be provided to Afzal by Bazeer to update the records on the name of the accused person, age, date of birth, gender, nationality, FIN number, residential address, mobile number, offences they are charged for, bail amount,

remand date, next court date, lawyer/counsel, passport number, Investigating Officer's contact details and name and the number of years the accused persons were working in Singapore for. Afzal would thereafter send the records to Bazeer via WhatsApp for Bazeer to confirm the accuracy of what was recorded.

12. Another purpose of Afzal maintaining the excel sheet was to keep track of court dates, as the bailors would need to go down to the State Courts to accompany the accused persons. At times, when the bailors were unable to attend, Afzal attended on the bailor's behalf. Afzal sent the excel sheet to Revi about two to three times for Revi to update the next Court mention date and case status. The excel sheet has 11 columns and is colour coded. Blue means that the case is concluded. Orange means that the case is ongoing. Green means that the case has been outstanding for more than a year. Yellow means that monetary/cash bail is involved. The last record in the excel sheet is in November 2018 because Afzal stopped maintaining the records as he became familiar with how to assist Bazeer in scouting for bailors.

13. The information of the relevant accused persons would also be forwarded to the respective bailors for them to memorise, so that they could convince the Court that they were legitimate bailors of the accused persons. Separately, Afzal would also liaise with the Investigation Officers regarding the passports of the accused persons and their special pass applications.

14. Once a case was concluded, Bazeer would inform Afzal. Afzal would then contact the bailors to inform them that they would be receiving monies in their account in the next few days. The bail amount (if the bail was 'cash' bail) would be transferred into the bailor's account by the State Courts. The bailor would be entitled to take a cut of about $1,000 to $3,000 from the bail sums. Bazeer would tell Afzal how much the bailors could deduct, and how much Afzal would get from the bail sum. Thereafter, the bailor would pay either Bazeer or Afzal depending on who scouted the bailor. If the monies were transferred to Afzal, Afzal would transfer the monies to Bazeer after deducting his own share. Bazeer would withdraw the monies and hand over the monies to Revi, for Revi to return to the next of kin or friends of the accused persons.

15. In most cases, the bailors would take more than the agreed sum. Bazeer would have to chase the bailors to return the monies. Some bailors would flee after the monies were sent to their account. Those bailors were blacklisted by them. From the said bail monies, Revi would deduct part of the monies for his legal fees and give an extra portion of $500 to $1,000 to the

bailors as a bonus and return the remaining sums to the next of kin.

16. As this arrangement was illegal and Afzal and Bazeer knew that what they were doing was wrong, Afzal and Bazeer agreed they had to be discreet and ensured that there were no receipts issued to foreign clients for the payment of the 'fee' for them to scout for bailors.

17. If an accused person absconded from Court, Revi would inform Bazeer. Bazeer would then call the accused person to locate him. Bazeer would also inform the bailor to contact the accused person. If 48 hours passed, Revi would advise them to lodge a police report and tell them what to write in the police report, including that the bailor had taken all necessary measures to locate the client but to no avail. The bailors would be indemnified from having to make any payment to the State Courts because:

> a. for cash bail, the cash amount was provided by the next of kin or friends of the accused persons.
>
> b. for property bail, if the Court ordered payment of the bail amount, the payment would be borne by Bazeer and Afzal. The bailor would make an application to the Court to pay by installments. Thereafter, Bazeer and Afzal would share the burden of paying up using the commissions they earned.

18. All the bailors would be briefed by Bazeer and/or Afzal prior to them standing as bailors that they need not worry if the accused persons absconded because they (Bazeer and Afzal) would bear the cost (if any). The bailors were convinced that they were not liable for anything and merely agreed to this arrangement for the promise of fast cash.

19. The arrangement carried on from end-2017 till the date of Bazeer's arrest on 7 January 2020. The offence under s 106A(2) of the Criminal Procedure Code (Cap. 68, 2012 Rev Ed) came into force on 31 October 2018.

FACTS RELATING TO MAC-900780-2022

20. On or about 7 November 2019, Bazeer contacted N Ammaran to assist to bail out an accused person Gnanaprakasam Vetriselvan ("**Gnanaprakasam**"), an Indian national. Gnanaprakasam was charged with one count under s 267B of the Penal Code (Cap. 224, 2008 Rev Ed) for affray. The bail amount was set as $5,000 in one surety (property bail) on 30 October 2019.

21. N Ammaran had previously bailed out two other accused persons for Bazeer:

> a. On 13 March 2019, Mazed (FIN No. GXXXXXXXX), who had been charged in Court with one count under s 354(1) of the Penal Code (Cap. 224, 2008 Rev Ed) ("**PC**") and one count under s 509 of the PC with bail amount $10,000 in one surety; and
>
> b. On 4 November 2019, Nallathambi Kumar (FIN No. GXXXXXXXX), who had been charged in Court for two counts under s 267B of the PC with bail amount $5,000 in one surety.

22. On or around 7 November 2019, Bazeer called him on his phone and told him that Gnanaprakasam needed to be bailed out. Bazeer promised N Ammaran that he would not be liable for anything should Gnanaprakasam abscond or fail to attend Court. N Ammaran knew that if Gnanaprakasam absconded, Bazeer would indemnify him from all losses and/or liability.

23. Bazeer thereafter asked N Ammaran to meet him outside of the State Courts. At the State Courts, Bazeer provided N Ammaran with the details of Gnanaprakasam on a piece of paper. Bazeer told N Ammaran to memorise the details, so that he could convince the State Courts that he was a legitimate bailor (a fact which Bazeer knew to be false). At the bail centre, N Ammaran passed his identification card to the officer at the counter and told the officer that he wished to bail out Gnanaprakasam. The officer asked N Ammaran questions and N Ammaran regurgitated the answers that he had memorised from the slip of paper provided to him by Bazeer. In fact, N Ammaran had never met Gnanaprakasam before and did not know him. Thereafter, N Ammaran went before Magistrate Lau Qiuyu, and stood as bailor for Gnanaprakasam. The bail bond dated 7 November 2019 signed by N Ammaran is attached as **Annex B**.

24. N Ammaran agreed to stand as surety for Gnanaprakasam as he was promised $500 by Bazeer. After successfully bailing Gnanaprakasam, N Ammaran met Bazeer outside of the State Courts and received $500. In exchange, he handed over to Bazeer the bail documents.

25. By virtue of the foregoing, Bazeer knowingly entered into an agreement with one N Ammaran to indemnify him against any liability which he may incur as a surety to a bail bond for Gnanaprakasam.

26. Bazeer has thereby committed an offence under s 106A(2) of the Criminal Procedure Code (Cap. 68, 2012 Rev Ed).

27 He stands charged accordingly.

The proceedings in the Magistrate's Court

The parties' submissions

9 The Prosecution sought a sentence of at least five weeks' imprisonment, arguing that the custodial threshold was clearly crossed as the appellant was part of a syndicated operation regularly offering bail indemnity services in the course of business. The Prosecution also highlighted the appellant's high level of personal involvement and the lengthy period of the offending conduct. It submitted that the aggravating factors warranted a custodial term of four to eight weeks' imprisonment.

10 The appellant initially sought a fine and a short sentence in default, highlighting his plea of guilt, cooperation with the police, clean record and various family circumstances. He also argued that s 106A of the CPC was a "victimless crime", that this was the first prosecution for an offence under s 106A and that the appellant was ignorant of the law. He submitted that a fine of $10,000 would be appropriate.

11 However, the appellant changed his position subsequently. He argued for a sentence of three weeks' imprisonment instead, comparing the provisions for cheating under s 417 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") and for giving false information to a public officer to cause the public servant to use his lawful power to the injury of another person under s 182 of the Penal Code.

The DJ's decision

12 The DJ found that deterrence was the dominant sentencing consideration for the Charge as the offence was committed against the State Courts, a public institution and it threatened to undermine the criminal justice system (GD at [32]). The custodial threshold was crossed because the potential harm of the offence was appreciable, such as the abscondment of an offender released on bail or other potential breaches of the bail conditions (GD at [36] and [39]). Far from being a victimless crime, the legal ramifications of the breach of a surety's obligations went beyond reputational harm to the courts and extended to the erosion of public trust in the judicial system and the expenditure of public resources in apprehending the absconder (at [44]). The syndicated nature of the bail business was also aggravating as the enlarged outreach caused greater harm (at [47]). The pivotal role the appellant played in the active procurement of local bailors and the high degree of premeditation involved in the criminal operation also increased the appellant's culpability (at [50]–[53]).

13 The DJ gave limited weight to the appellant's plea of guilt which was made only just before the commencement of the trial. While the appellant's role in similar arrangements involving bail indemnity agreement prior to the criminalization of the act was not considered in sentencing, the fact that the appellant persisted in such conduct despite knowing it to be morally wrong pointed to the evident lack of remorse.

14 The DJ also held that the appellant could not be considered a first offender as he was involved in the commission of similar offences, which was the subject matter of two charges taken into consideration (GD at [54]–[56]). The offence was therefore not an isolated incident. She empathized with the

appellant's personal and family circumstances but commented that it was established case law that such hardship bore little mitigating value.

15 Accordingly, the DJ sentenced the appellant to six weeks' imprisonment. The appellant was granted bail pending his appeal.

Procedural history of the appeal

16 MA 9074 was originally fixed for hearing on 16 August 2024. In early August 2024, the appellant's counsel, Mr Govindaraju s/o Sinnappan ("Mr Sinnappan"), applied by letter for the hearing date to be postponed by eight weeks because the appellant needed to be with his ailing father in India and because Mr Sinnappan needed more time to consolidate his arguments on whether s 106A(2) of the CPC was constitutional and to consider whether a revision petition was necessary. In another letter, Mr Sinnappan requested an extension of time to file his written submissions by 12 August 2024.

17 The Supreme Court Registry asked Mr Sinnappan to explain his late request and what the nature of the revision petition would be. In his 11 August 2024 letter, Mr Sinnappan explained that the appellant wanted to clarify with his former defence counsel on why he did not ask for a fine before the DJ. Mr Sinnappan also explained his failure to comply with the deadline for written submissions was due to the appellant's indecisiveness and stated that the appellant had changed his mind and would not be pursuing a revision petition on the constitutionality of s 106A of the CPC.

18 I granted the request for extension of time to file the written submissions and also adjourned the hearing date. The appellant's written submissions were eventually filed on 16 August 2024 and the hearing date was changed to 8 November 2024. However, the Prosecution's lead Deputy Public Prosecutor

would not be available and the appeal was subsequently refixed for hearing on 22 November 2024.

19 On 18 November 2024, the appellant applied by letter for a further postponement of the appeal. He submitted a medical certificate dated 16 November 2024 issued by a clinic in India which stated that the appellant had been admitted in hospital for severe dengue fever and would need to be in hospital care for at least two weeks. Accordingly, the appeal was postponed to 14 February 2025.

20 However, on 31 January 2025, two weeks before the hearing date, Mr Sinnappan wrote to the Court to request permission to file a "revised submission incorporating additional material arguments". When asked by the Supreme Court Registry, he explained in a subsequent letter that the revised submissions contained "new facts, legal issues and precedents" and that the delay in his request was due to the material not being available at the time of his earlier submissions and that he needed time to analyse his case. Mr Sinnappan then proceeded to file the revised submissions on 6 February 2025 without waiting for the Court's approval.

21 In the revised submissions, Mr Sinnappan argued that s 106A of the CPC was unconstitutional. He also submitted that the sentence ought to be a fine.

22 The Prosecution objected to the filing of the revised submissions as they sought to raise constitutional arguments and thereby departed from the Petition of Appeal and the appellant's earlier stated position that he did not wish to file any revision petition concerning this issue. There was no new material involved as the cases and the statutory provisions relied on pre-dated the filing of the

Petition of Appeal. If a further adjournment was allowed by the Court, the Prosecution asked for four weeks to file its reply submissions.

23 I allowed the appellant's second set of submissions to be filed and gave the Prosecution four weeks to reply. As a result of this, the hearing had to be postponed again. The Prosecution filed its reply submissions on 11 March 2025 and the hearing of the appeal was fixed for 24 April 2025.

24 On 9 April 2025, the appellant changed his defence counsel, with Mr Manickavasagam s/o R M Karuppiah Pillai ("Mr Manickavasagam") of Manicka & Co replacing Mr Sinnappan. Despite this late change of defence counsel, the appellant did not request a further postponement of the appeal.

25 However, on the day of hearing on 24 April 2025, Mr Manickavasagam did not turn up in Court. Instead, a staff member of his law firm attended and tendered a medical certificate on his behalf. The hearing of the appeal was again adjourned and it was heard eventually on 9 May 2025.

Parties' positions on appeal

26 On appeal, the appellant initially contended that six weeks' imprisonment was a manifestly excessive sentence and sought a reduction of three to four weeks' imprisonment. Subsequently, the appellant changed his position and submitted that a fine would be the appropriate sentence if s 106A of the CPC was held to be constitutional.

27 The appellant referred to s 106 of the CPC which allows a Court or police officer to permit a person to enter into his personal bond instead of requiring that person to sign a bond with one or more sureties. The appellant

termed this "self-bail". From here, he contended that s 106A of the CPC was unconstitutional on two grounds.

(a) First, s 106A of the CPC infringed Art 12 of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution") for being discriminatory because "self-bail" was lawful while indemnifying or providing funds to a surety for bail, which was a form of "self-bail", was unlawful.

(b) Second, the appellant submitted that s 106A violated Art 9 of the Constitution as it was absurd and uncertain, since an agreement to indemnify a surety did not lead invariably to the conclusion that the surety might not carry out his duties or would be disincentivised from doing so.

28 On the question of sentence, the Prosecution highlighted that the appellant's position in the Magistrate's Court was that a custodial sentence of three weeks' imprisonment would be appropriate. The Prosecution submitted that the DJ had identified correctly the harm and the culpability of the case based on the offence-specific and offender-specific factors and the sentence imposed was an appropriate one. The Prosecution contended that the appellant's unmeritorious constitutional challenge, raised after he had pleaded guilty and after his former defence counsel had stated that the appellant would not be submitting a constitutional challenge, demonstrated his lack of remorse.

29 On the legal arguments, the Prosecution submitted that bail indemnity arrangements, where accused persons were bailed out by strangers, caused harm as they removed the financial and personal pressures exerted on the bailor to fulfil his obligations to supervise the accused. The Prosecution contended that s 106A of the CPC was not unconstitutional. Article 9(1) protected procedural

rights and was intended to secure the right to a fair process rather than permit a substantive assessment of s 106A. The mere fact that a provision conferred a wide discretion did not make the provision vague and thereby unconstitutional under Art 9(1). Similarly, s 106A of the CPC did not prescribe a differentiating measure as it applied equally to any person who entered into a bail indemnity agreement. Therefore the threshold question for a violation of Art 12 of the Constitution was not satisfied.

Issues before this court

30 Three issues arose for the determination on appeal:

(a) whether s 106A of the CPC infringes Article 9 of the Constitution for being absurd and/or vague;

(b) whether s 106A of the CPC infringes Article 12 of the Constitution for being discriminatory; and

(c) if s 106A of the CPC is constitutional, whether the sentence of six weeks' imprisonment was manifestly excessive. This involved a consideration of whether the sentence should be a fine because this was the first time s 106A was invoked by the Prosecution.

Decision of the Court

31 This was the first case of prosecution for an offence under s 106A of the CPC. Having considered the parties' submissions, I agreed with the Prosecution that s 106A of the CPC does not infringe Article 9 or Article 12 of the Constitution.

The legal framework of bail and personal bonds

32 Bail is intended to balance various competing interests: (a) the presumption of innocence, which means that it would be unfair for someone accused of a crime to remain in remand when he has not yet been found guilty by a court; (b) the need to secure an accused person's continued attendance in court and ensure that justice is done; and (c) the need to ensure that those who may pose a danger to public safety, are at risk of re-offending while on bail or who may interfere with evidence, are not released on bail (Singapore Parl Debates; Vol 94, Sitting No 69; [19 March 2018] (Ms Indranee Rajah, Senior Minister of State for Law) ("*Parliamentary Debates*")). The bail mechanism represents the best compromise between the two goals of the right to liberty prior to conviction and of securing an accused's attendance at trial (*Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753. Therefore, when a person is accused of an offence and is either brought before a police officer or court, he may be granted bail to allow him to continue with his daily life, subject to continued attendance in court and restrictions on travelling.

33 A person may be released on bail whether he has been accused of a bailable offence or a non-bailable offence. For persons accused only of bailable offences, s 92(1) of the CPC provides that any person prepared to give bail must be released on bail by a police officer as of right. Bailable offences are set out in the fifth column of the First Schedule to the CPC (s 2(1) of the CPC). However, the court retains a discretion to order that an accused person not be released on bail or personal bond if the court believes that the person will not surrender to custody, be available for investigations or attend court (s 92(3) of the CPC). Where a person is accused of a non-bailable offence, the person may be released on bail by a police officer of or above the rank of sergeant or by the court (s 93(1) of the CPC).

34 To ensure that a person accused of an offence is disincentivised from absconding or otherwise breaching the conditions of bail, the court requires the accused person to have a bailor or surety. The bailor has various duties, such as ensuring that the accused person surrenders to custody or makes himself available for investigations or attends court on the appointed date. The bailor is also to keep in daily communication with the accused person and must lodge a police report within 24 hours of losing contact (s 104 of the CPC). To hold bailors accountable, bailors must execute a bond for a sum of money, which may be in the form of monetary or non-monetary bail. If a breach of any condition of bail occurs, the court may call upon the bailor to explain why the bond should not be forfeited and may forfeit the whole or any part of the amount the bond (s 107A of the CPC).

35 However, a surety is not always required for an accused person to be released from custody. Where a person is accused of a bailable offence, the police officer or the court may release the accused person on his personal bond without sureties (s 92(2) of the CPC). A similar provision applies to persons accused of non-bailable offences under the conditions set out in s 93 of the CPC.

36 In the instant case, the accused person bailed out by Mr N Ammaran ("Mr Ammaran") pursuant to the appellant's scheme was charged with one count of affray under s 267B of the Penal Code, which is a bailable offence. The accused person would therefore have been offered bail as of right.

The genesis of the offence under s 106A of the CPC

37 Section 106A(2) of the CPC makes it an offence for any person who, on or after 31 October 2018, knowingly enters into an agreement which indemnifies or purports to indemnify any person against any liability which that

person may incur as a surety to a bail bond. Section 106A(1) makes such an agreement void.

38 Such indemnity agreements are against public policy. A bailor would be incentivised to fulfil his obligations when his own assets or money are at risk of forfeiture. A bailor who is indemnified against all financial loss would have no incentive to perform his duties. Failing to consider the source of a surety's funds may lead to the invidious situation where an accused person who has the financial means can effectively purchase his own freedom (*Public Prosecutor v Yang Yin* [2015] 2 SLR 78 ("*Yang Yin*") at [39]). For this reason, s 106A of the CPC was promulgated by Parliament to disallow sureties to bail bonds from being "indemnified by third parties, as doing so would remove the incentive for them to fulfil their obligations" (*Parliamentary Debates*).

39 However, the appellant contends that s 106A of the CPC infringes Art 9 or Art 12 of the Constitution. I do not accept this contention.

Section 106A of the CPC does not infringe the Constitution

Section 106A of the CPC does not infringe Art 9 of the Constitution

40 Article 9(1) of the Constitution provides that "[n]o person shall be deprived of his life or personal liberty save in accordance with law". The requirement of "in accordance with law" has been interpreted to extend beyond the formal validity of a law enacted by Parliament. The phrase requires the relevant law to be in compliance with the rules of natural justice and not to be absurd or arbitrary (*Tan Seng Kee v Attorney-General and other appeals* [2022] 1 SLR 1347 ("*Tan Seng Kee*") at [254]). The test of "absurdity" is procedural in nature in that it secures the right to a fair process in the context of a possible deprivation of life or personal liberty. It does not permit the court to

examine the substantive content of a statutory provision. It would be an impermissible trespass onto Parliament's legislative domain if a substantive "fair, just and reasonable" test was the criterion for assessing the constitutionality of an impugned law under Art 9(1) (*Tan Seng Kee* at [259], [264] and [265]).

41 The appellant made two arguments in relation to Art 9 of the Constitution:

(a) section 106A was absurd because entering into a bail indemnity agreement would not lead inevitably to the surety's failure to carry out or derogation of his duties; and

(b) section 106A was vague as to whether it prohibited the bail indemnity agreement itself or the consequent conduct of sureties breaching their duties due to a lack of financial incentive to supervise the accused persons.

The crux of the appellant's oral submissions was that it was absurd that an accused person was permitted to "bail himself out" by way of a personal bond but would commit an offence if he provided funds to a bailor to "bail himself out".

42 I rejected these arguments because they challenged the substantive content of s 106A of the CPC rather than any procedural aspect of s 106A. The appellant's contention that a bail indemnity agreement would not lead inevitably to a surety's failure to carry out his duties questioned the effectiveness of the provision in achieving the desired outcome. However, the constitutionality of a provision under Art 9(1) is not contingent on its efficacy. If Parliament

considers it appropriate to enact such a provision, the courts do not question the wisdom or the efficacy of that provision.

43 The appellant's argument that s 106A was absurd because an accused person could "bail himself out" by signing a personal bond but could not provide funds to a bailor to bail himself was also a substantive challenge to the bail and personal bond regime. As explained earlier, different criteria applied to the eligibility of an accused person to be released on personal bond as opposed to being released on bail requiring a surety.

44 I also rejected the appellant's argument that s 106A of the CPC was vague as to whether it targeted the bail indemnity agreement itself or the conduct of sureties failing to perform their obligations. On this point, the appellant relied on *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 ("*Ting Siew May*") at [105] to highlight that an examination must be undertaken to establish whether the statutory provision intended to prohibit only the conduct or both the conduct and the contract. *Ting Siew May* concerned the question whether an option to purchase a property, which was backdated to circumvent the tightening of residential property loan requirements by the Monetary Authority of Singapore ("MAS"), should be refused enforcement as it was tainted by illegality. The Court of Appeal held that the contravention of a statutory provision by itself would not result in the contract being rendered void and unenforceable. It would depend on a purposive construction of the statute and whether the relevant statutory provision was intended by Parliament to prohibit the contract itself (at [105]–[116]).

45 I was unable to see how *Ting Siew May* assisted the appellant's case. The contravened provision in *Ting Siew May* was an enhanced restriction on residential property loans implemented by way of a notice from the MAS

pursuant to s 55 of the Banking Act (Cap 19, 2008 Rev Ed) which did not address backdated options to purchase. In contrast, s 106A of the CPC is clear and unambiguous in scope and effect. Section 106A(1) of the CPC renders bail indemnity agreements void, whether they were made before, on or after 31 October 2018. Section 106A(2) of the CPC renders knowing entry into such bail indemnity agreements to be a criminal offence. The offence is made out once a party enters into a bail indemnity agreement, regardless of whether the surety who is indemnified performs his duties or not and irrespective of whether the accused person absconds. This is a policy decision made by Parliament within its legislative ambit. There is therefore nothing vague about the scope of s 106A of the CPC.

46 During the hearing of the appeal, a question arose as to whether s 106A(2) of the CPC would be infringed if a bailor borrows money from an accused person in order to use the borrowed money as bail for that accused person. When the amendments introducing s 106A to the CPC were being debated by Parliament, Member of Parliament Mr Christopher de Souza raised the concern that the prohibition of bail indemnity agreements would remove the possibility of families which lack financial means borrowing from relatives and friends in order to put up the bail amount. In response, Senior Minister of State for Law Indranee Rajah explained in *Parliamentary Debates* that a surety would be permitted to borrow money to raise bail:

> Having said that, I should clarify the scope of the offence [of a prohibition against indemnity agreements].
>
> It will require that the surety enters into an agreement with the third-party, that if bail is forfeited because the accused person absconds, the third-party will cover all or part of the forfeited bail that the surety will be liable to pay.
>
> It does not mean that the surety can never borrow money to raise bail. For example, if the surety borrows some money to raise bail and remains liable to repay that money, then it is not

> an indemnity. In other words, the surety must have a vested interest in ensuring that the person turns up in Court.

47 It appears therefore that there would be no breach of s 106A of the CPC if the surety remains liable to repay money borrowed for the purposes of putting up bail. However, if a bailor purports to borrow money from the accused person partly or wholly to raise the bail amount for that accused person, such a bailor is almost certainly not a genuine debtor. It is highly improbable and against common sense for any person to put himself in debt to the person who needs him to be his bailor by borrowing money from that person. The accused person who requires the bailor's help would be the same person who could cause the bailor to forfeit the bail amount by absconding or otherwise breaching the bail conditions. It would be an absurd situation for the bailor to forfeit the bail amount and yet owe the borrowed amount to the person who caused both the debt and the forfeiture. This would place the bailor in double jeopardy for the amount of money borrowed. In all likelihood, the accused person would be indemnifying the bailor by providing the funds for his own bail. In such a situation, it would appear that both the accused person and the bailor infringe s 106A CPC.

48 The same situation could arise if the accused person moves himself one level away from the bailor. This could happen if the accused person provides the funds to some third party (whether related in any way or not to the accused person or to the bailor) and that third party then purports to lend the money to the bailor. This would clearly be an attempt to circumvent s 106A of the CPC.

49 However, these issues concerning borrowed funds for bail did not arise in the appeal. I will therefore leave them as discussion points for future consideration.

Section 106A of the CPC does not infringe Art 12 of the Constitution

50 Article 12 of the Constitution provides:

> **Equal protection**
>
> **12.**—(1) All persons are equal before the law and entitled to the equal protection of the law.
>
> (2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

51 The test for assessing whether a statutory provision is constitutional under Art 12 is the "reasonable classification test". Under this test, a a statutory provision which prescribes a differentiating measure will be consistent with Art 12(1) only if:

> (a) the classification prescribed by the provision is founded on an intelligible differentia; and
>
> (b) that differentia bears a rational relation to the object sought to be achieved by the provision (*Tan Seng Kee* at [305]).

52 The appellant contended that s 106A of the CPC is discriminatory. It criminalises the act of an accused person providing funds to a surety so that the surety could be the bailor for that accused person. However, s 106 of the CPC would permit the same accused person to put up his own funds if he is released on personal bond.

53 In *Lim Meng Suang and another v Attorney-General and another appeal and another matter* [2015] 1 SLR 26 at [57], the Court of Appeal held that the

reasonable classification test is not even engaged if the impugned statute is not discriminatory in the first place. While individuals within a single class should not receive different punitive treatment, it is not impermissible to discriminate between one class of individuals and another class if there is some difference in the circumstances of the offence that has been committed (*Tan Seng Kee* at [306], citing *Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 at [153]).

54 The appellant's argument that s 106A(2) of the CPC infringed Art 12 of the Constitution failed at the threshold question of whether s 106A(2) of the CPC prescribed a differentiating measure. As explained earlier, the considerations for bail with sureties and for personal bonds without sureties are different. The accused person does not get to choose whether his release is to be secured by his personal bond or by a bail bond with one or more sureties. If an accused person is not released on his personal bond, it means that the court or the police officer is not satisfied that the risk of forfeiting the accused person's own funds is sufficient incentive for him to comply with the terms of his release. If the accused person who is released on bail with one or more sureties seeks to circumvent the safeguard of having someone stand as suretyby indemnifying the surety directly or indirectly against the financial risks of being a surety, the accused person falls within the prohibition set out in s 106A(2).

55 There is no differentiation in the application of s 106A(2) because it applies to any person, whether that person is the accused person, the bailor or some third party, who knowingly enters in a bail indemnity agreement on or after 31 October 2018. The indemnifier and the indemnified are all caught by the provision. If the accused person is the indemnifier, he is culpable as well.

56 Accordingly, s 106A of the CPC does not infringe any provision of the Constitution, in particular Arts 9 and 12. The appellant's constitutional challenge in this appeal therefore failed.

The sentence was not manifestly excessive

57 A sentence is said to be manifestly excessive if there is a need for substantial alteration to be made to the sentence (*Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [13]). On the facts here, I did not think this threshold for appellate intervention was crossed.

58 Both the Prosecution and the appellant submitted before the DJ that the custodial threshold was crossed. The appellant asked initially that a fine of $10,000 be imposed. He submitted later that three weeks' imprisonment would be an appropriate sentence. On appeal, in his Petition of Appeal, he asked that the imprisonment term be set aside and be substituted with a "reasonable fine". However, in his first set of written submissions filed on 16 August 2024, he argued for a three to four-week reduction in his imprisonment term. This changed again when he filed the second set of written submissions on 6 February 2025. Besides setting out his arguments that s 106A of the CPC infringed the Constitution, he submitted that "a fine suffices given the mitigating factors that were not sufficiently or considered at all".

59 The appellant contended that no harm was occasioned by the offence as the accused person named in the Charge, Mr Gnanaprakasam Vetriselvan ("Mr Vetriselvan"), attended court and did not breach the conditions of his bail. The appellant submitted that the DJ was wrong to consider the potential harm arising from the increased likelihood of a breach of a surety's duties and in failing to consider whether the surety had in fact fulfilled his duties.

60 I did not think that the DJ was wrong in her assessment of the harm caused by the offence set out in the Charge. It was true that Mr Vetriselvan pleaded guilty eventually, was sentenced and served his sentence. There was therefore no actual harm caused because the accused person named in the Charge did not abscond while on bail and did not breach any bail conditions.

61 However, the same could not be said for potential harm. The surety, Mr Ammaran, considered his job as bailor done once bail was granted and the bail documents were passed by him to the appellant. Mr Revi and the appellant were the ones who monitored whether the accused person in the Charge attended court and they were the persons who would initiate measures to track the accused person down if the accused person absconded. Clearly, the bailor would not have fulfilled his obligation to keep in daily contact with the accused person named in the Charge and would not know should that person breach his bail conditions since the sureties were only doing this for "fast cash" and thought that they were "not liable for anything", as set out in the Statement of Facts. Such "professional bailors" would have no interest whatsoever in the duties imposed on them by law and this would be contrary to the very purpose of giving bail with sureties.

62 The appellant also submitted that his culpability was low because the bail indemnity scheme was intended to help accused persons who were unable to be bailed out because of the requirements that a bailor be Singaporean and someone who is close to the accused person. As explained earlier, the system of bail is a compromise between the presumption of innocence and the need to ensure the continued attendance of accused persons in criminal proceedings. The appellant's actions in the bail arrangements were done with his awareness that what he was doing "was wrong" and the people involved had to be discreet to conceal their actions. The DJ was therefore correct to hold the view that the

appellant's culpability was high, especially when his pivotal role, the degree of planning and sophistication and the methodical execution of the scheme were considered (GD at [50]–[52]). Despite the appellant's claim of apparent altruism for foreign accused persons, it remained clear that his prime motivation was the financial reward in operating the illegal bail scheme.

63 The appellant further argued that he should have been considered as a first-time offender as he had not been convicted of any criminal offence. Yong Pung How CJ held in *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [14]–[17] that it is the prerogative of the court to refuse to consider as a first-time offender anyone who has been charged with multiple offences or who has multiple offences taken into consideration. In a situation where an offender has no prior convictions but is convicted on multiple offences or has multiple offences taken into consideration, the court could form the view that the only reason the offender has no prior convictions is that the law has not caught up with him for his past misdeeds. In this case, although the appellant was only arrested on 7 January 2020, he had operated the illegal bail indemnity scheme for over a year after s 106A of the CPC came into operation on 31 October 2018. He had two similar charges taken into consideration. There was therefore no error in the DJ's finding that the appellant should not be described as a first offender.

64 Considering the totality of the circumstances, the sentence of six weeks' imprisonment could not be said to be manifestly excessive. The syndicated bail indemnity scheme operated by the appellant was a systematic interference with the proper administration of bail. The appellant's active role in recruiting local bailors and maintaining the records for the bail indemnity scheme showed the high level of his culpability. It was therefore correct that general deterrence was

the dominant sentencing consideration here and that a custodial sentence should be imposed.

65 In calibrating the sentence, the DJ also considered the sentences imposed for analogous offences, such as providing false information with intent to cause a public servant to use his lawful power to the injury of another under s 182 of the Penal Code (GD at [39]–[41]). The DJ also attenuated the weight to be attached to the appellant's plea of guilt on the first day of the trial and took into account the two similar offences in sentencing (GD at [54] and [56]).

66 On the whole, the sentence of six weeks' imprisonment reflected correctly the degree of potential harm and the high culpability of the appellant. Accordingly, I dismissed his appeal against sentence.

Summary

67 I rejected the arguments in respect of the constitutional challenge against s 106A of the CPC. I also dismissed the appeal against the imprisonment sentence.

68 At the conclusion of the appeal, I extended bail for the appellant by two weeks on the same terms and ordered the appellant to surrender at the State Courts on 23 May 2025. Subsequently, on 19 May 2025, the appellant filed Criminal Motion No 13 of 2025 ("CM 13") to ask permission from the Court of

Appeal to refer questions of law of public interest to the Court. I therefore extended his bail on the existing terms pending the determination of CM 13.

Tay Yong Kwang
Justice of the Court of Appeal

Manickavasagam s/o R M Karuppiah Pillai (Manicka & Co) for the appellant;
Tan Wee Hao and Gabriel Gan (Attorney-General's Chambers) for the respondent.