IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 11

Court of Appeal / Criminal Motion No 1 of 2026

Between

Khartik Jasudass

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Criminal review — Permission for review — Section 394H Criminal Procedure Code 2010 (2020 Rev Ed)]

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Khartik Jasudass
v
Public Prosecutor

[2026] SGCA 11

Court of Appeal — Criminal Motion No 1 of 2026
Tay Yong Kwang JCA
28 January 2026

10 March 2026

Tay Yong Kwang JCA:

Introduction

1 The applicant, Khartik Jasudass, was convicted on an offence of trafficking in diamorphine under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and sentenced to the minimum sentence of life imprisonment and 15 strokes of the cane. His appeal against conviction and sentence in CA/CCA 26/2015 ("CCA 26") was dismissed by the Court of Appeal on 9 September 2016.

2 Subsequently, the applicant filed CA/CM 19/2020 ("CM 19") which was an application for permission to apply for a review of the decision in CCA 26. CM 19 was dismissed by me summarily on 25 February 2021 in *Khartik Jasudass v Public Prosecutor* [2021] SGCA 13 ("*Khartik (CM 19)*").

3 CA/CM 1/2026 ("CM 1") is the applicant's present application for permission to apply for a review of the decision in CM 19, made pursuant to s 394H(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"). The applicant relies primarily on the existence of an alleged new witness who can "prove the existence of Raja" and "the amount of duress". Raja was the person who purportedly forced the applicant to deliver drugs under duress.

4 The relevant facts and procedural history are found in the trial Judge's decision in *Public Prosecutor v Khartik Jasudass* [2015] SGHC 199 ("*Khartik (Trial)*") and in *Khartik (CM 19)*. I set out the pertinent facts below.

Facts

5 On 27 August 2012, the applicant and his co-accused, Puniyamurthy a/l Maruthai ("Puniyamurthy"), rode into Singapore on a motorcycle which had three bundles of drugs hidden in it. They delivered one bundle to a male Malay and collected $2,500 from him. Before they could deliver the other two bundles, they were arrested by officers from the Central Narcotics Bureau. The two bundles of drugs contained a total of 26.21g of diamorphine ("the Drugs").

6 In statements made to the police and in court, the applicant and Puniyamurthy stated that they began doing drug deliveries after Raja offered them the job. When they did not wish to continue with the job, Raja made threats against them and their families ("Alleged Threats").

Trial

7 The applicant and Puniyamurthy claimed trial to one charge each of trafficking in diamorphine in furtherance of their common intention, an offence under s 5(1)(*a*) and s 5(2) of the MDA read with s 34 of the Penal Code

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(Cap 224, 2008 Rev Ed). In the trial before the High Court, the main issue concerning the applicant was whether the applicant knew the nature of the Drugs. It was submitted that the presumption of knowledge under s 18(2) of the MDA was rebutted as: (a) the applicant did not know that different types of drugs existed and did not know the type of drugs he was delivering; and (b) in view of the Alleged Threats made by Raja, the applicant's failure to inquire further about the Drugs did not constitute wilful blindness (see *Khartik* (Trial) at [46]). Counsel for the applicant accepted that the Alleged Threats could not constitute the defence of duress because the applicant had admitted that he was "out of Raja's reach when he entered Singapore on 27 August 2012" ("Admission"); see *Khartik (Trial)* at [46(c)].

8 The trial Judge rejected the submission that the applicant was "ignorant of drugs and dealings in drugs" and held that the inquiries made by the applicant of Raja "fell far short of what would be expected of a reasonable person" (*Khartik (Trial)* at [64] and [67]). The trial Judge held that the presumption of knowledge in s 18(2) of the MDA was not rebutted.

9 The trial Judge also found, for completeness, that the applicant was unable to rely on the defence of duress. She rejected his evidence that there were any threats of instant death and held that the Admission demonstrated that the Alleged Threats, if any, did not operate on the applicant's mind at the material time of the offence (*Khartik (Trial)* at [97] and [102]).

CCA 26

10 On 9 September 2016, the applicant's appeal against his conviction and sentence in CCA 26 was dismissed by the Court of Appeal, together with Puniyamurthy's appeal in CA/CCA 27/2015 ("CCA 27"). The Court of Appeal delivered the following oral judgment:

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> The law on the interpretation and application of s 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) has been well explored and ruled upon in previous cases, one of the latest being *Dinesh Pillai a/l Raja Retnam v Public Prosecutor* [2012] 2 SLR 903. The facts of this case show that both appellants knew that they were carrying illegal drugs. They did not bother to ascertain or make further enquiries as to what nature of the drug it was. In these circumstances, the trial judge held that the appellants had failed to rebut the presumption prescribed in s 18(2). We do not see how we could disturb that finding. A mere assertion by the appellants that they did not in fact know the exact nature of the drug is not good enough when they made no efforts at all to ascertain what exact drug they were carrying.
>
> Accordingly, we will dismiss the appeals of both appellants.

CM 19

11 In CM 19, the applicant and Puniyamurthy sought permission to apply for a review of the Court of Appeal's decision in CCA 26 and CCA 27. They contended that the appeals were decided wrongly because the law developed significantly after the appeals were dismissed (*Khartik (CM 19)* at [10]).

12 On 25 February 2021, I dismissed CM 19 summarily. I held that the applicant and Puniyamurthy failed to show a legitimate basis for the court to review the appeals and that there was clearly no miscarriage of justice (*Khartik (CM 19)* at [32]).

The applicant's arguments in CM 1

13 The applicant makes three arguments in CM 1:

(a) First, the applicant had stated in his long statement recorded on 13 February 2013 ("Long Statement") that, of the two bundles of Drugs seized, one belonged to him and the other belonged to Puniyamurthy. The trial Judge did not give the statement any weight as she did not find its contents crucial. The matter was not properly dealt with at the trial.

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The weight of diamorphine in each bundle was below the threshold for a capital offence. The Drugs were seized from Puniyamurthy and not from the applicant ("First Argument").

(b) Second, he has a new witness, a fellow inmate named Nitthianenten a/l Atamalingam ("Nitthianenten"), who "will be able to testify on the duress I suffered from Malaysia en route to Singapore, the circumstances that forced me to bring in the drugs because of the fear and the real harm that 'Raja', our loan shark would mete out towards my family". The new witness was also "duped" and "cheated" by Raja and will be able to inform the Court on the amount of duress that the applicant was facing ("Second Argument"). The applicant did not call the new witness to testify at the trial as he did not know that he was also arrested. He met the new witness in prison recently.

(c) Third, the applicant maintains that there is a "huge difference" between his defence that he did not know the type of drugs that he had brought into Singapore and the Prosecution's assertion that he did not care about the type of drugs that he brought in. He "believed that the drugs were not dangerous enough to the extent that I would be sentenced to death" ("Third Argument").

14 I make two observations on the present application. First, although the applicant claims to seek permission to review the decision in CM 19, CM 1 is in effect his second application for permission to review the decision in CCA 26. Second, although his arguments in CM 1 pertain to his conviction, the applicant states in the information sheet attached to his affidavit supporting the present application that he would like to stress that there was no miscarriage of

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justice but he "would like for the honourable Court to review my case and lower my sentence".

15 The applicant reiterates his request for a lower sentence in Annex A of his affidavit (which sets out his handwritten submissions):

> In the circumstances, I respectfully ask that for myself to be granted leave to apply to review this court's decision in CM 19 of 2020 and to lower my sentence given the circumstances and to amend my charge to a non-capital charge.

Decision

CM 1 is statutorily barred

16 Insofar as CM 1 is an application for permission to review the decision made in CM 19, s 394K(5) of the CPC provides that no application for permission may be made in respect of a decision of an appellate court on an application for permission. The decision in CM 19 does not fall within the permitted categories of cases found in s 394G(1) of the CPC. Accordingly, no permission application may be brought in respect of CM 19 (*Moad Fadzir bin Mustaffa v Public Prosecutor* [2024] 1 SLR 814 at [25]).

17 Insofar as CM 1 is a *second* application for permission to review the decision in CCA 26, s 394K(1) of the CPC provides that an applicant cannot make more than one review application in respect of any decision of an appellate court. This statutory bar extends to the making of a second permission application and applies even if the subsequent permission application is made on a different basis from the first (*Pausi bin Jefridin v Public Prosecutor* [2024] 1 SLR 1127 ("*Pausi*") at [43]).

18 On either of the above perspectives, CM 1 is barred by statute and therefore cannot be brought.

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There is no basis to invoke the court's inherent power of review

19 Notwithstanding the dismissal of a prior permission or review application, an applicant may invoke the appellate court's inherent power to review an earlier decision of the appellate court (*Pausi* at [54]), subject to the following:

(a) In the absence of new material emerging after the dismissal of the prior permission/review application, the court should not ordinarily exercise its inherent power of review (*Pausi* at [55] and [57(e)]; see also *Ramdhan bin Lajis v Public Prosecutor* [2025] SGCA 22 ("*Ramdhan bin Lajis*") at [32]).

(b) The court's exercise of its inherent power to review is only 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" (*Moad Fadzir bin Mustaffa v Public Prosecutor* [2024] 1 SLR 677 at [28]).

(c) The requirements for the exercise of the court's inherent power mirror the requirements for the court's exercise of its statutory power of review in s 394J of the CPC, If the material put forth by the applicant does not satisfy the requirements under s 394J of the CPC, the court cannot exercise its inherent power to reopen a concluded appeal on the basis of the same material (*Ramdhan bin Lajis* at [33]).

20 Section 394J(2) of the CPC requires that the applicant satisfy the appellate court "that there is sufficient material (being evidence or legal arguments) on which the appellate court may conclude that there has been a

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miscarriage of justice in the criminal matter in respect of which the earlier decision was made". For any material to be "sufficient" for the purposes of s 394J(2) of the CPC, it must not have been "canvassed at any stage of the proceedings in the criminal matter in respect of which the earlier decision was made" (s 394J(3)(*a*) of the CPC). It must also be shown that the material "could not have been adduced in court earlier" even with reasonable diligence (s 394J(3)(*b*) of the CPC). The material must be "compelling, in that the material is reliable, substantial, powerfully probative, and capable of showing almost conclusively that there has been a miscarriage of justice in the criminal matter" (s 394J(3)(*c*) of the CPC).

21 Clearly, there is no basis to invoke the court's inherent power of review in the present case. The applicant's First and Third Arguments (at [13(a)] and [13(c)] above) clearly do not amount to "sufficient material". Despite having raised the First Argument in the Long Statement on 13 February 2013, the applicant did not pursue the position at the trial. Instead, the applicant's counsel sought to argue that the Long Statement was inadmissible (see *Khartik (Trial)* at [52], [103]–[104]). The First Argument was also not pursued in CCA 26 or in CM 19. Further, as the Prosecution points out, the Third Argument was canvassed at the trial, in CCA 26 and in CM 19. The applicant does not point to any new evidence or new legal argument based on a change in the law that would justify a revisit of this issue.

22 The applicant's Second Argument, relying on the existence of a "new" witness, is insufficient to warrant a further review of his conviction and sentence. First, as the Prosecution points out, it is unclear when the new witness became available. The applicant claims that he saw Nitthianenthen in prison "only recently" but also states that he wrote to his previous counsel regarding this matter "about a few months ago".

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23 Second, it is unclear what evidence Nitthianenthen will give and whether it is of a nature which satisfies the requirement of being "compelling" in s 394J(3)(*c*) of the CPC. The applicant merely claims that Nitthianenthen was also "duped" and "cheated" by Raja and would be able to testify as to the "existence of Raja" and the "amount of duress" the applicant faced. The applicant's own assertions regarding the nature of Nitthianenthen's intended testimony are insufficient: see *Chandroo Subramaniam* at [25]–[26]; *Sinnappan a/l Nadarajah v Public Prosecutor* [2021] SGCA 10 at [17]).

24 Third, taking the applicant's case at its highest, any evidence that Nitthianenthen can give regarding the duress caused to the applicant cannot be "capable of showing almost conclusively that there has been a miscarriage of justice". As the Prosecution points out, the applicant did not rely on the defence of duress at the trial and neither did he advance that defence in CCA 26 or CM 19. In fact, at the trial, counsel for the applicant accepted that the defence was inapplicable (see [7] above). In any event, the trial Judge held that the applicant was unable to rely on the defence of duress (see [9] above). She noted that the Admission demonstrated that the Alleged Threats, if any, did not operate on the applicant's mind at the material time of the offence (*Khartik (Trial)* at [102]).

25 In the light of the above, any evidence from Nitthianenthen cannot constitute compelling evidence capable of showing almost conclusively that there has been a miscarriage of justice. Incidentally, the applicant himself has "stressed" that there was no miscarriage of justice (see [14] above).

26 Insofar as the outcome that the applicant seeks in any further review is that his sentence be lowered (and not that the correctness of his conviction be impugned) (see [14] above), the applicant is seeking a legally impossible outcome. The trial Judge imposed the mandatory minimum sentence of life

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imprisonment and 15 strokes of the cane. That was the only lawful sentence that the trial Judge could impose on the facts of this case. The court's decision on sentence therefore could not be "demonstrably wrong" (see s 394J(7) of the CPC).

Conclusion

27 For the above reasons, pursuant to s 394H of the CPC, I dismiss CM 1 summarily without it being set down for hearing.

Tay Yong Kwang
Justice of the Court of Appeal

The applicant in person;
Anandan Bala, Marcus Foo and Sarah Siaw (Attorney-General's Chambers) for the respondent.

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