

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 120

Criminal Motion No 11 of 2019

Between

Shanker Maghalingam

... Applicant

And

Public Prosecutor

... Respondent

FOUNDATIONS OF DECISION

[Criminal Procedure and Sentencing] — [Bail]

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Shanker Maghalingam

v

Public Prosecutor

[2019] SGHC 120

High Court — Criminal Motion No 11 of 2019

Tay Yong Kwang JA

3 May 2019

9 May 2019

Tay Yong Kwang JA:

1 The applicant applied for bail pending trial. He is a 31-year-old Singaporean who has been charged with 18 charges including the offences of gang robbery, housebreaking by night and voluntarily causing grievous hurt by dangerous means. 14 of these offences were allegedly committed by him after he had been granted bail in January 2017 for a charge relating to the offence of voluntarily causing grievous hurt by dangerous means. He was accused of drug offences and possession of scheduled weapons (under the Corrosive and Explosive Substances and Offensive Weapons Act (Cap 65, 2013 Rev Ed)) in March 2017, dangerous driving in November 2017 and housebreaking by night and gang robbery on 11 Dec 2017.

2 On 17 Dec 2017, the applicant left Singapore by boarding a boat at Changi, leaving by an unauthorised route without his passport. His absence was discovered at a subsequent pre-trial conference in January 2018. Investigations

by the police led eventually to his arrest in Johor Bahru by the Malaysian police in April 2018 and he was brought back to Singapore. On 14 April 2018, the District Court refused to grant bail to him.

3 On 30 July 2018, the applicant applied for bail in the District Court on the grounds that his father had passed away recently and he wanted to spend time with his mother. Bail was again refused on the grounds that he had absconded from jurisdiction and was facing charges of serious offences allegedly committed while on bail.

4 On 12 March 2019, the applicant filed this criminal motion in the High Court for bail to be granted to him pending trial in the State Courts. This application was supported by his own affidavit, his elder brother's affidavit and the applicant's 27-year-old girlfriend's affidavit. His elder brother stated that he was willing to be the applicant's bailor and that he believed the applicant "is not a flight risk and there is no likelihood that he will leave the jurisdiction". The brother added that he had "the utmost confidence that the Applicant will appear in Court as directed and/or required by the Honourable Court to answer all the charges that he is currently facing". The applicant's girlfriend stated that they have been in a steady relationship for more than two years since 2017. She was aware that the applicant was likely to face a significant term of imprisonment if found guilty and stated that "[b]efore this prolonged separation begins, I would like to formalise my relationship with the Applicant by marrying him and assuming the legal status as his wife".

5 The prosecution submitted that as the applicant was charged with non-bailable offences, s 95(1)(b) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) applied and the burden was on the applicant to show why he should be granted bail. This provision states that an accused person shall not be released

on bail if he is accused of any non-bailable offence and the Court believes, on any ground prescribed in the Criminal Procedure Rules 2018 (S 727/2018), that the accused, if released, will not surrender to custody, be available for investigations or attend court. Rule 5(1) of the said rules provides that, for the purpose of s 95(1)(b) (among other sections), the court must have regard to all of the following non-exhaustive factors:

- (a) the accused is not a citizen or permanent resident of Singapore;
- (b) the accused is not domiciled in Singapore;
- (c) the background, antecedents, employment history, occupation, home environment, community ties and financial position of the accused;
- (d) the association of the accused with other individuals;
- (e) the nature and seriousness of the offence that the accused is charged with;
- (f) the manner in which the accused is likely to be dealt with if convicted of that offence;
- (g) the nature and strength of the evidence relating to the offence that the accused is charged with;
- (h) the accused did not comply with one or more of the conditions imposed under s 94 of the Criminal Procedure Code when the accused was released on bail on a previous occasion;

(i) there is evidence (for instance, of the doing of a preparatory act) that the accused does not intend to surrender to custody, be available for investigations or attend court, if the accused is released on bail.

6 In this application for bail pending trial, the factors against the granting of bail were:

(a) the applicant was charged with serious non-bailable offences, committed on different occasions;

(b) he failed to comply with a previous bail bond by not attending in Court; and

(c) he absconded to Malaysia by leaving Singapore by unauthorised means and had to be re-arrested with the assistance of the Malaysian police.

7 The applicant put forward the following grounds for his bail application:

(a) his father passed away on 11 July 2018, his 54-year-old mother was in poor health and he wished to spend time with her before facing a prospective long imprisonment term;

(b) he wanted to marry his “long term” girlfriend and start a family so that he could have full family support which would aid in his rehabilitation. In addition, his wife could look after his mother; and

(c) he was not a flight risk as he did not have his Singapore passport with him and was willing to subject himself to electronic monitoring, daily reporting or any other conditions.

8 The prosecution informed the Court that the applicant was on electronic monitoring before but went on to cut the tags placed on him. The prosecution also highlighted that the applicant was able to leave Singapore stealthily by boat in December 2017 without his passport and had to be traced and re-arrested. Counsel for the applicant confirmed before me that this was not disputed by the applicant.

9 Looking at the facts before the Court in a holistic manner and bearing in mind that the charges against the applicant had not been proved in Court yet, I did not think that the applicant's personal circumstances and preferences should take precedence over the wider public interest in ensuring that accused persons turn up in Court to answer their charges. The applicant's mother could still visit him physically or by video-link. His present intention to be a filial son could not take precedence over the past criminal conduct that he had been accused of and the indisputable fact that he absconded from Singapore instead of facing the charges in Court. His "long term" girlfriend was someone with whom he had a steady relationship from 2017. If she was willing to marry him and then wait for him while he served a possible long term of imprisonment, then logically, she should be equally willing to wait for him to complete his imprisonment before marrying him. It might even be argued that it would be irresponsible for the applicant as a husband and a father to have a baby just before serving a possible long term of imprisonment. His girlfriend could take care of his mother if she wished, even without being married to him.

10 As for the applicant's claim that he was not a flight risk, his previous conduct spoke much more loudly and clearly than his mere words. The applicant's elder brother might have faith in him but the Court looking at the objective evidence found it hard to trust the applicant's words.

11 The application for bail was therefore dismissed.

Tay Yong Kwang
Judge of Appeal

Amardeep Singh (Edmond Pereira Law Corporation) for the
applicant;
Dwayne Lum (Attorney-Generals' Chambers) for the respondent.
