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

**[2021] SGHC 151**

Criminal Case No 28 of 2021

Between

Public Prosecutor

And

Mohamed Affandi bin
Mohamed Yuz Al-Haj

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# GROUNDS OF DECISION

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[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]

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# Public Prosecutor
# v
# Mohamed Affandi bin Mohamed Yuz Al-Haj

**[2021] SGHC 151**

General Division of the High Court — Criminal Case No 28 of 2021
Aedit Abdullah J
28 April 2021

24 June 2021

**Aedit Abdullah J**:

1 Mohamed Affandi bin Mohamed Yuz Al-Haj (the "accused") pleaded guilty to one charge of conspiracy to traffic in not less than 14.99g of diamorphine, an offence under s 5(1)(*a*) read with s 12, punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA").[1] He was sentenced to 28 years' imprisonment. The accused was exempt from caning due to his age. Several charges were taken into consideration for sentencing.[2] He has now appealed.

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1 Arraigned Charges dated 15 April 2021 (the "Charge") at p 1; Mohamed Affandi bin Mohamed Yuz Al-Haj's Plea in Mitigation (Amendment No. 1) dated 28 April 2021 ("DC Sentencing Subs") at para 1.

2 Form 53 issued on 28 April 2021.

## The charge

2 The charge (the "Drug Charge") reads:[3]

> That you, 1**. MOHAMED AFFANDI BIN MOHAMED YUS AL-HAJ**,
>
> on or before 4 May 2017, in Singapore, did abet by engaging in a conspiracy with one Lizawati …, one "Mahmood" and one or more unknown persons to do a certain thing, namely, traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), and in pursuance of that conspiracy, and in order to the doing of that thing, an act took place on 4 May 2017, at about 5.15 p.m., in front of 28 Jalan Pelatok, Singapore, to wit, you approached a taxi bearing registration number SHC288B to take delivery of **eight (8) packets of granular/powdery substance which was analysed and found to contain a total of not less than 14.99g of diamorphine**, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 12 of the MDA, punishable under s 33(1) of the MDA.
>
> [emphasis in original]

## The Statement of Facts

3 The accused admitted to the Statement of Facts ("SOF"). This disclosed that on 4 May 2017, a Malaysian bus was stopped at Woodlands Checkpoint. The driver, one Thiban Balakrishnan, was arrested with two other Malaysians: Thevarj Manogaran ("Thevarj") and Sargunan Gandur Selvakumar ("Sargunan").[4] A search on the bus turned up a haversack containing a red and a black plastic bag containing packets of granular substance.[5] The items were seized.[6] The various granular substances were subsequently analysed and found to contain 90.07g of diamorphine, a Class A Controlled Drug listed under the

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3 Charge at p 1.

4 Statement of Facts dated 15 April 2021 ("SOF") at para 2.

5 SOF at para 3.

6 SOF at para 4.

First Schedule to the MDA.[7] There was thus a total of not less than 14.99g of diamorphine.[8]

4 On 4 May 2017, Thevarj and Sargunan informed officers from the Central Narcotics Bureau ("CNB") that the haversack was to be delivered at Kranji MRT. CNB then pursued a follow-up operation to arrest the intended recipients of the haversack.[9] The accused was then arrested later on 4 May 2017, as he approached a taxi that had stopped at the front of 28 Jalan Pelatok. The co-accused, Lizawati, was arrested nearby.[10]

5 Investigations revealed that the accused and co-accused started working for one "Mahmood", a drug supplier based in Indonesia in 2016. The two of them would receive instructions from Mahmood and liaise with Mahmood and others in Malaysia to receive diamorphine and methamphetamine. The drugs would be delivered by the two of them to various recipients on Mahmood's instructions, and they would collect payments due from drug customers. The two would also sometimes repack the drugs into smaller packets before delivery. They received and delivered the drugs on Mahmood's behalf and collected payments from the drug recipients once or twice a week. They were paid $100 to $200 each time. The two would also remit the collected payments to Mahmood via money transfers.[11]

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7 SOF at paras 7, 9 and 11.

8 SOF at para 10.

9 SOF at para 5.

10 SOF at para 6.

11 SOF at para 12.

6 On 4 May 2017, the accused and co-accused were instructed by Mahmood to collect "kopi", which referred to diamorphine,[12] for delivery from Kranji MRT. The point of collection was then changed to Jalan Pelatok, with the two being informed that the person delivering would be arriving in a taxi. At about 5.15pm when the taxi had stopped at Jalan Pelatok, the accused approached the taxi intending to receive the drugs that he and the co-accused had been instructed to collect. It was then that he and the co-accused were arrested.[13]

7 Neither of the two were authorised to traffic in diamorphine under the MDA.[14]

**The Prosecution's submissions on sentence**

8 The Prosecution sought against the accused and co-accused imprisonment for at least 29 years,[15] applying the framework laid down in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") and endorsed in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 ("*Suventher*"), under which the quantity of drugs will provide the indicative starting point, and after which adjustments will be made on the basis of culpability, presence of aggravating or mitigating factors, and time spent in remand.[16] The framework has been applied in respect of diamorphine trafficking in *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 ("*Tan Lye Heng*").[17]

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12 SOF at para 13.

13 SOF at para 13.

14 SOF at para 14.

15 Prosecution's Submissions on Sentence dated 15 April 2021 ("PP Sentencing Subs") at para 3.

16 PP Sentencing Subs at para 4.

17 PP Sentencing Subs at para 5.

Given the quantity involved is stated to be not less than 14.99g, the indicative starting point should be 29 years' imprisonment.[18]

9 The accused and co-accused each displayed culpability on the higher end of the spectrum. First, they played critical roles in the drug trafficking operations: they were not just receiving and delivering drugs, but also repacking drugs, collecting payments, and remitting payments to Mahmood on a frequent basis.[19] Second, they obtained financial gains for their efforts.[20] With regard to aggravating factors, nine other charges (the "CDSA Charges"), pertaining to transfers of drug payment moneys contrary to s 46(2) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) (the "CDSA") read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), were taken into consideration for the accused.[21] Mitigating factors, namely their pleas of guilt and cooperation with CNB, did not have much weight in the circumstances, and should not lead to any discount from the indicative starting point.[22]

**The Defence's mitigation plea**

10 Counsel for the accused sought a sentence of 20 years' imprisonment,[23] pointing to the accused's cooperation with CNB officers, great remorse, and plea of guilt.[24] Reliance was placed on *Angliss Singapore Pte Ltd v Public*

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18 PP Sentencing Subs at para 6.

19 PP Sentencing Subs at para 8(a).

20 PP Sentencing Subs at para 8(b).

21 PP Sentencing Subs at para 9.

22 PP Sentencing Subs at para 10.

23 DC Sentencing Subs at para 28.

24 DC Sentencing Subs at paras 11–12.

*Prosecutor* [2006] 4 SLR(R) 653 for the proposition that a lighter sentence should be imposed where the accused person is genuinely remorseful.[25] The accused had no drug-related antecedents.[26] Not much was earned by the accused from each transaction.[27] Aside from *Vasentha* and *Tan Lye Heng*,[28] counsel also pointed to *Jeffery bin Abdullah v Public Prosecutor* [2009] 3 SLR(R) 414 ("*Jeffery bin Abdullah*"), for various factors that would be taken into account in sentencing, namely the quantity of drugs, drug type, duration and sophistication of the offence, and relative levels of participation where more than one offender is involved.[29] It was also emphasised, citing *Vasentha*, that quantity alone would not be determinative.[30] As the present case involved 14.99g of diamorphine, with a range of 20 to 30 years' imprisonment, a sentence of 20 years' imprisonment would be appropriate.[31] The sentence should be backdated to the date of arrest, that is, 4 May 2017.[32]

## The decision

11 The accused and co-accused were each sentenced to 28 years' imprisonment, backdated to the date of arrest, 4 May 2017.

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25 DC Sentencing Subs at para 13.

26 DC Sentencing Subs at para 14.

27 DC Sentencing Subs at para 16.

28 DC Sentencing Subs at para 18.

29 DC Sentencing Subs at para 19.

30 DC Sentencing Subs at paras 20–21.

31 DC Sentencing Subs at paras 25–26.

32 DC Sentencing Subs at para 27.

***The sentencing framework***

12 There was no real dispute on the applicable law, as laid down in the Court of Appeal decision in *Suventher*, which endorsed the approach in *Vasentha*. The full sentencing range prescribed by law should be adopted, and the starting points should be broadly proportional to the quantity of drugs: *Suventher* at [29]. The indicative sentence is then adjusted to take into account culpability, as well as aggravating and mitigating factors, and the court should also consider imposing imprisonment in lieu of caning where caning cannot be administered: *Suventher* at [30]. While *Suventher* was concerned with cannabis, similar sentencing ranges may be adopted for other types of drugs where the range of prescribed punishment is the same as the unauthorised import or trafficking of 330 to 500g of cannabis: *Suventher* at [29] and [31].

13 Indicative starting points for diamorphine trafficking (between 10 and 15g) were adopted in *Tan Lye Heng* at [125], and that decision has been followed since (see *Murugesan a/l Arumugam v Public Prosecutor* [2021] SGCA 32 at [7]–[8]):

(a) 10 to 11.5g: 20 to 22 years' imprisonment;

(b) 11.51 to 13g: 23 to 25 years' imprisonment; and

(c) 13.01 to 15g: 26 to 29 years' imprisonment.

14 While the factors listed in *Jeffery bin Abdullah*, as cited by counsel for the accused, remain relevant, these factors must be weighed within the framework endorsed by the Court of Appeal in *Suventher*. Quantity alone is not determinative, but the indicative starting points laid out take into account the influence of quantity on culpability and harm. The greater the amount of drugs, generally, the greater the criminal responsibility and the effect of the criminal

conduct. As the calibration carried out by the court after the indicative starting point is determined takes into account other factors, both aggravating and mitigatory, quantity is indeed never the sole factor. There is, with respect, nothing in the *Suventher* framework that overweighs quantity.

*Quantity of drugs and culpability*

15 In the present case, the quantity involved was not less than 14.99g. That indicated a high level of culpability, and it was commensurate with the framework that the starting point should be towards the higher end of the sentencing spectrum. That the sentence should be at the higher end was also buttressed by the accused's performance of various roles in the criminal activity: the accused was not just transferring drugs, but also repacked drugs, collected payment from drug customers and remitted drug payment moneys overseas. This activity was not one-off as it had been going on for some time, in return for money that while not large in amount, was not negligible either.

*Aggravating factors*

16 While the accused did have antecedents, as these were not related to misuse of drugs,[33] I did not attach them any weight.

17 Some uplift was given for the nine CDSA Charges taken into consideration.[34] Taking the CDSA Charges into consideration would not lead to a double counting of the remittal of drug payment moneys overseas. The remittal of funds highlighted at [15] above is an illustration of the broader point

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33 CRO of Affandi at p 2.

34 There is a typographical error in one of the nine CDSA Charges (*ie*, the 6th Charge against the accused), but this error did not change the fact that the accused was involved in a fund transfer contrary to s 46(2)(b) of the CDSA.

that the accused played many supporting roles in furtherance of drug trafficking operations, whilst the nine CDSA Charges demonstrate that some of these ancillary responsibilities were criminal as well. However, any uplift due to the nine CDSA Charges could not be that substantial. In most cases of this nature, there will be some movement of funds up the supply chain. What might distinguish this case was that the records of the transfers were readily available. What I think was apparent even aside from the CDSA Charges, and this was part of the SOF for the Drug Charge and already accounted for above at [15], was that the money received would be handed up the supply chain on a regular basis, and that to my mind indicated a higher level of culpability than would otherwise be the case.

*Mitigating factors*

18 There was little by way of mitigation. The plea of guilt had some mitigating effect on the sentence, but it did not lead to a substantial reduction. Both *Suventher* and *Vasentha* involved pleas of guilt: the framework imposed in each would have been in the context of (but not limited to) guilty pleas anyway, so the sentence imposed should not attract any further discount on account of the use of this framework.

19 The best mitigating factor was that there was no prior drug conviction. This would at least show that there was no recalcitrance in drug offending. It was noteworthy that this was in fact the first drug conviction for the accused though given the seriousness of the charge, that fact could not attract much leniency.

20 The accused also relied on his cooperation with the CNB officers. This was primarily founded on the lack of resistance when he was arrested, in the

midst of waiting for the drug delivery,[35] and the identification of Mahmood as the drug supplier based in Indonesia.[36] I did not see any indication of any other cooperation by the accused with the authorities. Given the absence of additional evidence of cooperation indicating remorse and reducing the criminal impact of his activities, some but not that much reduction could come from this claim of cooperation.

*Other factors*

21 I would note that while the accused could not be caned because of his age, no additional term of imprisonment was sought to make up for this.[37]

***Determination of the sentence***

22 The Prosecution sought 29 years' imprisonment,[38] while the Defence sought 20 years.[39]

23 A term of 20 years as sought by the Defence was far too low, and did not address sufficiently the degree of culpability and aggravating factors, including the charges taken into consideration. It would have brought the accused into the lowest band in *Tan Lye Heng*, which was intended to be the starting point largely for quantities in the range of 10 to 11.5g. The strength of mitigating factors sufficient to bring the sentence down to that band would have to be very high. There was little reason though, on the facts, to bring the sentence all the way down to what is at the bottom end of the sentencing framework. 20

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35 SOF at para 6.

36 SOF at para 12.

37 PP Sentencing Subs at para 3.

38 PP Sentencing Subs at para 6.

39 DC Sentencing Subs at para 28.

years is in fact the minimum imprisonment term for the trafficking of 10 to 15g of diamorphine: s 33(1) read with Second Schedule of the MDA.

24 Imprisonment for 29 years as sought by the Prosecution appeared to be somewhat high in the circumstances. While there were a number of charges taken into consideration, concerning dealing with the benefits of trafficking, the amount of money involved was not so great, totalling some $16,300.

25 In the circumstances therefore, I concluded that 28 years' imprisonment was appropriate. It was still within the highest band of sentences, reflecting the quantity of drugs in question, but at the same time some moderation was effected particularly to reflect the lack of similar antecedents.

26 The same length of imprisonment was imposed on the co-accused, who was implicated in the same drug transaction that would have taken place on 4 May 2017, had similar culpability, had no antecedents,[40] and faced the same number of charges under s 46(2) CDSA which were also taken into consideration.

Aedit Abdullah
Judge of the High Court

Terence Chua, Theong Li Han, Kwang Jia Min and Keith Jieren Thirumaran (Attorney-General's Chambers) for the Prosecution; Chung Ting Fai (Chung Ting Fai & Co), Nathan Edmund (Tan & Pillai) and Ong Xiang Ting, Charmian (Chung Ting Fai & Co) for the accused.

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40 CRO of Lizawati.