

**Awang Bin Haji Abdullah Mahrof**

AND

**Public Prosecutor**

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**(High Court of Brunei Darussalam)  
(Criminal Motion No. 20 of 2025)**

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Haji Abdullah Soefri bin POKSM DSP Haji Abidin, JC.

**Date of Ruling: 21<sup>st</sup> January, 2026.**

*Headnote: Criminal law – Application for leave to appeal out of time - Bail Application denied by Magistrate -No likelihood appeal to succeed – Application Dismissed*

Applicant/Defendant In Person.

DPP Radin Abdul Malik Wafri bin Radin Mas Mohamad Sufri for Public Prosecutor/Respondent.

**Cases cited:**

*Zulkifli bin Puasa and Others v Public Prosecutor* [1985] [MLJ 461]

*Hj Sadikin Bin Hj Ahmad v P.P* [Criminal Motion No. 1 of 2000]

*Sarimah binti Haji Muhammad Said v Public Prosecutor* [HCCM No. 7 of 2003]

*Hurnam v The State (Mauritius)* [2005] UKPC

**RULING**

**Haji Abdullah Soefri, J.C.:**

**Introduction**

This is an application for leave to appeal out of time by the Applicant against the decision of the Magistrate’s Court for denying the Applicant’s bail on 5<sup>th</sup> May 2025. The Notice of Appeal was filed on the 8<sup>th</sup> October 2025. The Applicant is facing with numerous charges for offences against property under Section 379 of the Penal Code, Cap 22 and to be read with Section 34 of the same.

**The Law**

Section 272(1) of the Criminal Procedure Code provides as follows:

*“The Appellant shall within 14 days from the time of such judgment, sentence or order being passed or made, file a petition in the Court of a Magistrate, paying at the same time the prescribed appeal fee.”*

Even though, the Defendant was delayed in filing the appeal, the Defendant has filed a criminal motion to apply for leave for an extension of time to file the appeal.

Section 278 of the Criminal Procedure Code states:

*“The judge may, on the application of any person desirous from doing so upon the ground of his not having observed some formality or requirement of this code, permit an appeal upon such terms and with such directions to the parties as he shall consider desirable, in order that substantial justice may be done in the matter”.*

Delay is an act of not observing some of the formality or requirement of the code but this does not stop the Court from hearing the appeal *“in order that substantial justice may be done in the matter”* as provided for under section 278 of the Criminal Procedure Code above.

What are the questions that need to be determined before leave should be granted?

In ***Zulkifli bin Puasa and Ors vs Public Prosecutor [1985] 1 MLJ 461***, there are two questions that this Court needs to consider in determining whether leave should be granted:

- a. the length of the delay and whether it can be satisfactorily explained; and
- b. whether the out-of-time application is likely to succeed.

In the same case, Sir Alan Huggins J.A. said:

*“There are two factors to be considered upon an application for an extension of time, (1) the length of the delay and whether it can be satisfactorily explained, and (2) whether the out of the time application is likely to succeed. Where, as here, the delay is of short duration the court may, if it thinks fit, disregard the delay, even in the absence of satisfactory reasons, but where a substantial interval of time (a month or more) has elapsed, an extension of time will not be granted, as a matter of course without a satisfactory explanation: see Rhodes (R v Rhodes [1910] 5 Cr App R 35). Where the delay is minimal the court will still not grant an extension of time if the application for which the extension is sought is bound to fail: there must be an arguable case. Moreover, even though the subsequent application may likely to succeed ... the court will not grant an extension of time as a matter of course: see Rigby. The entire circumstances will be considered”.*

In order for the criminal motion for leave to appeal out of time to be successful, the Applicant must give good reason for not filing his appeal within time which is 14 days after the decision was made by the Magistrate. Even if the Applicant had given good reason, the Applicant has to convince the Court that the appeal is likely to succeed (***Zulkifli bin Puasa and Others v Public Prosecutor [1985] [MLJ 461]***).

For this matter, the Magistrate’s Court ruled that the Applicant’s application for bail is to be denied on 5<sup>th</sup> May 2025. The Notice of Appeal was filed on the 8<sup>th</sup> October 2025. It is about two months plus days delay. The Defendant informed to the Court that the reason why he did not file the appeal on time was because he was saving money to pay for the filing fees.

### **Applicant's grounds of appeal**

The Defendant's grounds of appeal to be released on bail are as follows:

- 1) He is needed by his family and to send the children to school and to work.
- 2) He has a fixed address and is easy to be located.
- 3) He will abide with all the bail conditions set out by the Court

### **Respondent's grounds of objection**

The Prosecution's grounds of objection are as follows:

- 1) Strength of the prosecution's case as the Defendant had made confessions in his Police 22 Statements.
- 2) Likelihood that the Defendant may attempt to interfere with witnesses for the Prosecution.
- 3) Propensity to commit further offences as he has previous convictions from 2015.

### **Conclusion**

I have given careful consideration to all the issues raised by all the parties.

In *Hj Sadikin Bin Hj Ahmad v P.P* [Criminal Motion No. 1 of 2000] Robert C.J held as follows:

*"Where there is an application for bail, it must be accepted that the defendant has not been convicted of any offence and is therefore to be treated as an innocent person. It will then be for the prosecution, on balance of probabilities (lesser burden of proof) to establish that bail should not be granted to the defendant."*

What are the factors which should be considered by a Court, when deciding if bail should be granted or not? In the same case Robert C.J further stated as follows:

*"There are a number of matters which should be considered by a Court, when deciding if bail should be granted or not.*

*(f) the age of the Defendant and whether or not he has previous convictions, especially those of the same kind as that with which he is charged;*

*(g) if this is available, the strength of the prosecution case;*

*(i) the possibility that the Defendant would commit other offences while on bail."*

In the present case, the Defendant has been convicted for numerous cases since 2015 and was just released from prison when he was arrested again. Some of the previous convictions are for offences against property.

The Prosecution submitted that the Applicant has made confessions in his Police 22 statements for the offences for which he has been investigated in. Further it is submitted that he has been implicated by the accomplices.

In *Sarimah binti Haji Muhammad Said v Public Prosecutor* [HCCM No. 7 of 2003], the High Court for the purposes of bail, held as follows:

*“it is premature at this stage for the Court to consider the issue of the admissibility of these statements. Questions as to whether the statements are voluntary or not, and their reliability and accuracy, are matters for the trial Court to determine after hearing evidence. I think that for the purposes of this motion the statements cannot be put aside.”*

It has been adduced that the Defendant has previous convictions for the same nature of offences that he is being charged with and that he has just been released from prison and being arrested again for the present offences, I am satisfied that there is a possibility that the Defendant would commit other offences while on bail. The Prosecution has proven the strength of their case against him whereby he had made admissions in his Police 22 statements and that his accomplice has implicated him in their statements.

Taking into account all the factors that I have highlighted above, I am satisfied that the Prosecution has proven on balance of probabilities that Bail should not be given.

In *Hurnam v The State (Mauritius)* [2005] UKPC, Lord Bingham said [at para 1]:

*“The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the community has a countervailing interest in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and he does not take advantage of the inevitable delay before trial to commit further offences.”*

Considering all of the above, there is no likelihood that the bail appeal will succeed even if leave to appeal out of time is allowed. Therefor the application for leave to appeal out of time is hereby dismissed. The Magistrate’s decision to refuse bail still stands and the Defendant is to be remanded in prison custody pending trial.

**Haji Abdullah Soefri Bin Poksm DSP Haji Abidin**  
Judicial Commissioner