

Wong Chung Hong

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 13 of 2025)**

Haji Abdullah Soefri bin POKPSM DSP Haji Abidin, J.C.

Date of Ruling: 2nd October, 2025.

Headnote: Criminal law – Bail –Appeal against Magistrate Decision – Evidence in its entirety - Appeal Allowed - Magistrate Decision set aside.

Mr Czar Cabading Calabazon (M/S Rudi Lee, Annie Kon & Associates) & Pg Mohamad Sufi@ Pg Mohd Irfan Bin Pg Hj Mohammad Zaman (M/S Blue Harbour Advisors Law Office) for the Appellant.

DPP Abdul Musawwir Hj Awg Mahli for the Public Prosecutor/Respondent.

Cases cited:

Zainul Ariffin bin Munaf v P.P [CM No. 4 of 2024] High Court

Public Prosecutor v Hj Sadikin Bin Haji Ahmad [2000] 1 JCB 349

RULING

Haji Abdullah Soefri, J.C:

INTRODUCTION

The Appellant, Wong Chung Hong, was first brought before the Magistrate’s Court on 3rd May 2025. Initially, he was charged alone for an offence under Section 9(1) of the Electricity Act Cap 71 but it was later amended to be jointly charged under the same provision but to be read together with Section 34 of the Penal Code. The charge is as follows:

CHARGE

Reamended 1st Charge [against D1 and D3 only]

That both of you, sometime in 2023, at the vicinity of Unit E3 and E4 Block E, Tapak Perindustrian Ringan Lugu, Simpang 22, Jalan Ikas Bandung, Kpg Lugu, Mukim Sengkurong, in Brunei Darussalam, in furtherance of your common intention, did dishonestly cause to be diverted the electrical energy supplied by the Department of Electrical Services to Unit E3, to wit, by diverting the electrical energy

from Unit E3 to Unit E4, and both of you have thereby committed an offence punishable under Section 9(1) of the Electricity Act, Chapter 71 and read with Section 34 of the Penal Code, Chapter 22.

Penalty

Fine not exceeding \$50,000, imprisonment term of not exceeding 3 years or both, and in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction

MAGISTRATE'S GROUNDS OF DECISION

The appellant applied to be released on bail before the Magistrate's Court and this was denied. The Magistrate in denying the bail application based on the following grounds:

1. Gravity of the offence

"The gravity of the offence could be reflected from the prescribed penalties. In particular, it carries a fine of not exceeding \$50,000; an imprisonment term of not exceeding 3 years or to both a fine and imprisonment. In addition to this, should there be a "continuing offence", to a further fine, not exceeding \$2,500 for every single day or "part thereof", during which the offence continues after conviction"

In light of the said penalty prescribed, I am unable to agree with the defence that the offence allegedly committed is nothing more but minor, albeit not involving any acts of violence. The penalty in itself would provide a strong incentive for the defendant to abscond (Zainul Ariffin bin Munaf V P.P [CM No. 4 of 2024] High Court). The Sadikin [Public Prosecutor V Hj Sadikin Bin Haji Ahmad [2000] 1 JCB 349 case further provides that this ground, being the gravity of the offence, would go against the granting of bail.

2. Citizenship / Place of residence

"It was submitted by the DPP that the defendant has tenuous links with Brunei as his family do not have a Bruneian passport, and that his daughter is presently residing in Miri. Against this background, according to the prosecution, there is nothing to stop the Defendant from leaving Brunei and abscond.

I am of the view that the Prosecution has weight on this ground for refusing bail".

3. Strength of the Prosecution's case

"The DPP pointed out that it has strength on its case. In particular, the prosecution stated that the Defendant was implicated by other individual as well as the fact that he had made admissions of having "rewired and diverted" the electricity cables.

To this, the defence agreed, that the defendant was under the belief that a DES approval was granted for the said acts, and that he did not temper with the meters. There is no evidence put forth in substantially the defendant's claim. Hence I do not find this to be a persuasive ground favouring the defence in the granting of bail."

4. Health of the Defendant

Section 239 of the Prison Rules ensures that inmates will receive the medical care that is necessary in the perspective of medical professionals. Therefore, his continued remand will not jeopardize his access to medical care.

5. Preparation of Defence

The Defendant will not be impeded in making good preparation for his case while held in remand as Section 100 of the Prison Rules assures that the Defendant has access to legal counsel and legal advisers.

APPELLANT'S GROUNDS OF APPEAL

The Appellant appealed against the Magistrate's decision on the following grounds amongst others:

1) Gravity of offence

In *Hj Sadikin*, [*Public Prosecutor V Hj Sadikin Bin Haji Ahmad* [2000] 1 JCB 349 the High Court intended '*gravity*' to refer to capital or very serious offences such as those punishable by death, life imprisonment, or exceptionally long custodial sentence which would justify a departure from the general presumption in favour of bail.

Magistrate erred in her application of this factor.

2) Citizenship and place of residence

Magistrate erred in placing exclusive emphasis on the Appellant's Malaysian citizenship and failed to give proper weight to his long-standing residence and substantial personal and economics ties.

No concrete evidence presented by the Prosecution that he is a flight risk and they only rely on the Appellant's foreign nationality without reference to his family, business, residence or decades-long history in Brunei.

Even Court were minded to be cautious, the perceived risk of flight can be adequately managed through stringent bail conditions.

Appellant entire immediately family resides in Brunei.

The Magistrate has no specific finding that the Appellant pose a risk of interfering with witnesses and the Prosecution made no direct allegation to that effect.

Appellant has co-operated fully throughout the police investigation.

Appellant has no prior criminal record.

CONCLUSION

The question now is whether there are sufficient grounds to set aside the Magistrate's decision and to allow the appeal?

The Magistrate refusal of bail and gave weight that the Defendant has tenuous link with Brunei as his family do not have a Bruneian Passport and according to the Prosecution there is nothing to stop the Defendant from leaving Brunei and abscond should be looked into with all surrounding circumstances. The Appellant is being charged with an offence that are not mentioned as offences in *Hj Sadikin's* case[*supra*]. Even it is not mentioned as serious cases in *Hj Sadikin's* case[*supra*], it does

not mean that the Appellant should be released on bail automatically. It also applies that the Appellant is a foreign national will not mean that bail could not be granted.

The Magistrate should not look at this independently. The Magistrate should look into this together with other factors surrounding the Appellant. If the Magistrate look into the Appellant being a non-Bruneian together with his employment, business link, his length of stay in Brunei and most of his family are in Brunei and the daughter who was staying in Miri has now moved back to Brunei and seeking employment, and all the family are staying at a fixed address owned by the Appellant, his cooperation with police investigation, his co accused who is facing with multiple charges and facing more serious charges arising from the same investigation is released on bail, he has no criminal convictions and the type of offence and the penalty that the Appellant is facing, the Magistrate would have decided differently as there is less likelihood that the Appellant will abscond.

In *Hj Sadikin* [supra], Roberts, C.J held as follows:

“I consider that it would be useful, for future guidance, to set out the burden of proof in applications by the Defendants for bail.

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 (the lesser burden of proof) to establish that bail should not be granted to the Defendant.”

After considering the arguments, case precedent and the law and the evidence in its entirety, I am satisfied that the Prosecution has failed on balance of probabilities to establish that bail should not be granted to the Appellant.

Having said all the above I am allowing the appeal and reverse and set aside the decision of the Magistrate and allow the Appellant to be released on bail with the following conditions:

1. Defendant is to be released on cash bail of \$50,000.
2. Defendant’s passport to be surrendered to the DPP
3. Defendant to report to the Police (I.O of the case every Monday and Wednesday during office hours).
4. Defendant or his agent not to contact any prosecution witness or any other person related to this case directly or indirectly with whatever means.
5. Defendant not to commit or suspected to commit any offence while on bail.
6. Breach of these bail conditions, the Bail will be revoked.
7. Defendant to maintain a fixed address at No.80A, Kg Mata-Mata, Jln Mata-Mata Brunei Darussalam and to give the I.O contact number where he can be contacted.

Appeal is allowed and Magistrate’s decision is set aside.

HAJI ABDULLAH SOEFRI BIN POKSM DATO SERI PADUKA HAJI ABIDIN
Judicial Commissioner