

**Abdul Nazirul Akmal bin Abdul Razak**

AND

**Public Prosecutor**

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**(High Court of Brunei Darussalam)  
(Criminal Motion No. 1 of 2026)**

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Muhammed Faisal Bin PDJLD Kol(B) DSP Haji Kefli, J.C

**Date of Ruling: 13<sup>th</sup> April, 2026.**

*Headnote: Criminal Procedure — Leave to appeal out of time — Delay — No satisfactory explanation — Whether appeal has merit — Sentencing — Fine — Extension of time to pay — Financial hardship — No realistic ability to pay — No repayment plan — Whether extension justified held — Application dismissed — Appeal devoid of merit — No practical basis to extend time — Sentence and grace period proper*

Applicant In Person.

DPP Tiah Teck Chiun for Public Prosecutor.

## **EX TEMPORE RULING**

**Muhammed Faisal, J.C.:**

### **I Introduction and Background**

1. This is the Applicant's criminal motion seeking leave to file an appeal out of time against the sentence imposed by Magistrate Syaffina.
2. The background may be shortly stated. The Applicant, who was the second defendant in the proceedings below, pleaded guilty on 15 October 2025 to two charges under section 146(1)(d) of the Excise Order 2006, read with section 155 of the same. The charges relate to the abetment of possession of unexcisable goods, including cigarettes, vape products and alcoholic beverages.
3. On 18 October 2025, the Magistrate sentenced the Applicant to a total fine of BND144,620.00, in default 33 months' imprisonment. A grace period of six months was granted to enable the Applicant to settle the fine, that period expiring on 16 April 2026.

4. The Applicant does not challenge his conviction, nor does he challenge the quantum of the fine imposed. His application is confined to seeking a further extension of time to pay the fine.
5. The present application is brought by way of an appeal filed out of time. The Notice of Appeal was filed on 20 January 2026, some 80 days after the sentence was passed, well outside the 14-day period prescribed under the Criminal Procedure Code.<sup>1</sup>

## **II The Applicant's Position**

6. The Applicant relies primarily on personal and financial hardship.
7. He states that he has lost his employment following the case and now earns an uncertain income through fishing and selling *nasi katok*. He asserts that he is the main breadwinner of his family, with responsibilities towards a younger sister who is unwell and undergoing regular medical treatment, as well as other dependents including a spouse and a school-going child.
8. He further states that his financial difficulties are compounded by damage to his vehicle, which affects his ability to earn a livelihood, and by uncertainty regarding his current housing situation.
9. The Applicant emphasises that he does not intend to evade payment of the fine and expresses a willingness to pay according to his means if given further time. He contends that if he is committed to prison in default, he would have no ability to generate income and thus no means to pay the fine and support his family.

## **III The Respondent's Position**

10. The Prosecution opposes the application.
11. First, it is submitted that the delay of approximately 80 days in filing the appeal has not been satisfactorily explained. They argued that the appeal was only brought when the Applicant realised that he would be unable to pay the fine within the existing grace period.
12. Secondly, it is submitted that the intended appeal has no merit. It is pointed out that the Applicant has made only minimal payment towards the fine, amounting to BND920.00 as at 7<sup>th</sup> April 2026, leaving an overwhelming outstanding balance.

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<sup>1</sup> Section 272 (1) Criminal Procedure Code (CAP 7)

13. The Prosecution further submits that the Applicant has failed to put forward any concrete repayment plan or realistic timeline for settlement of the fine. In those circumstances, any extension of time would serve no practical purpose.
14. Finally, the Prosecution argues that the sentence imposed by the Magistrate, including the six-month grace period, was proper and in accordance with the statutory framework. It is emphasised that the fine imposed represents the minimum prescribed by law for a second offence, and that the grace period granted is consistent with established practice.

#### **IV Issues for Determination**

15. Having considered the application and the submissions of both parties, the issues for determination are as follows:
16. First, whether the Applicant has satisfied the requirements for leave to appeal out of time.
17. Secondly, if leave is granted, whether there are sufficient grounds to justify an extension of time for payment of the fine imposed by the Magistrate.

#### **V Whether Leave to Appeal Out of Time Should Be Granted**

18. It is well established that an applicant seeking leave to appeal out of time must satisfy two requirements. The Court must be satisfied, first, that the delay has been satisfactorily explained, and secondly, that the intended appeal has some merit or a reasonable prospect of success.
19. In the present case, the delay of approximately 80 days is significant. The Applicant has not provided any clear explanation for this delay in his submissions. He informed the Court that he was unaware of his right to appeal or the time limit for doing so until much later.
20. Even if such an explanation were to be accepted, that would not be sufficient in itself. The Applicant must still demonstrate that the intended appeal has merit.

#### **VI Whether the Intended Appeal Has Merit**

21. The intended appeal is, in essence, an application for a further extension of time to pay the fine.
22. In considering this, the Court must examine whether there is any realistic basis upon which such an extension ought to be granted.

23. I accept that the Applicant faces financial hardship and has family responsibilities. Those circumstances are unfortunate and not uncommon in cases of this nature.
24. However, the difficulty for the Applicant lies in the practical reality of his situation. The evidence before the Court indicates that, over a period of approximately six months, the Applicant has paid only BND920.00 towards a fine of BND144,620.00. This leaves an outstanding sum of over BND143,700.
25. A repayment proposal has been alluded to, but it is, at best, limited to small monthly sums. Such payments, even if made consistently, would result in the fine being discharged only over a very prolonged period of time. In the absence of any realistic timeframe within which the fine could be substantially reduced, let alone fully satisfied, the proposal does not present a practical basis for granting an extension.
26. In those circumstances, the Court is driven to the conclusion that there is no realistic prospect that the Applicant would be able to satisfy the fine even if a further extension were granted.
27. An extension of time, in such a case, would serve no practical purpose. It would merely defer the inevitable consequence of default, while prolonging the period of uncertainty and imposing additional administrative burdens in monitoring compliance.
28. Further, the sentence imposed by the Magistrate cannot be said to be excessive or improper. The fine represents the minimum prescribed by law for a second offence of this nature. The six-month grace period granted is consistent with established practice and has been recognised in prior authorities as sufficient.
29. While the Court sympathizes with the Applicant's personal circumstances, family hardship in itself does not constitute an exceptional basis for extending time in the absence of a realistic ability to pay.

## **VII Conclusion**

30. Taking all matters into account, I am not satisfied that the Applicant has demonstrated that his intended appeal has any reasonable prospect of success. That finding is sufficient to dispose of the present application.
31. In the premises, the application for leave to appeal out of time is dismissed and so ordered.

**MUHAMMED FAISAL BIN PDJLD DSP KOL(B) HJ KEFLI**  
Judicial Commissioner