

Public Prosecutor

AND

Khairul Bashar (D1)

**(High Court of Brunei Darussalam)
(Criminal Trial No. 3 of 2022)**

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

Date of Sentence: 2nd October 2025

Headnote: Criminal Law – Sentencing – Human Trafficking – Section 4 of the Trafficking and Smuggling of Persons Order 2004 – six Bangladeshi victims recruited by deception – plead guilty during trial after 4 out of 6 victims have given evidence – 1/3 discount in sentencing not afforded – multiple aggravating factors outweigh late guilty plea – sentence of 7 years 6 months’ imprisonment, fine \$120,000 and 4 strokes imposed.

DPP Hajah Rozaimah binti Haji Abdul Rahman and DPP Hajah Siti Mu’izzah binti Haji Sabli for the Public Prosecutor.

Mr Haji Mohamad Daud Bin Haji Ismail and Sheikh Ahmad Wa'ez bin Haji Sheikh Aubid of Messrs Daud Ismail and Company for the Defendant.

Cases cited:

Public Prosecutor AND Sudjai Sinthorn (Criminal Trial No.6 of 2012)

Public Prosecutor AND Piyaporn Sodadee and 3 others (Criminal Trial No.15 of 2016)

Statutes:

Section 4 of the Trafficking and Smuggling of Person Order 2004

Section 6 of the Trafficking and Smuggling of Person Order 2004

Section 293B of the Penal Code, Chapter 22

Section 354 of the Penal Code, Chapter 22

SENTENCING

Muhammed Faisal, J.C:

I Introduction

1. The Defendant is jointly tried with another person. Together they faced a total of nine (9) charges. The Defendant himself faces six (6) charges under punishable under section 4 of the Trafficking and Smuggling of Person Order 2004 (the “Order”).
2. This matter has proceeded to trial and the prosecution has called at least 4 witnesses so far. The first Defendant (D1) opted to reconsider his plea and thereafter to plead guilty to all of the charges against him, on 11th August 2025.

3. Plea in mitigation was recorded 1st September 2025 and thereafter submission on sentencing (by the prosecution) on the 4 September.
4. Today is for D1 sentencing. The trial continues for his co-Defendant, on another date.

II **Background**

5. All the victims were recruited by D1 to go Brunei from Bangladesh, with promise of work, high wages and decent living conditions
6. *For the First Charge.*

Between January–December 2018, D1 recruited Rasel Mia from Bangladesh, promising scaffolding work with Malai Mashor company at BND\$30 per day plus overtime and proper housing. In return, D1 demanded 350,000 Taka, paid through his relatives. Upon arrival in Brunei on 4th December 2018, Rasel Mia’s passport was taken by D1 and he was housed in an overcrowded staff house. Contrary to promises, he was unemployed for a month, later forced to work at Pulau Muara Besar, and then irregular jobs. D1 demanded monthly BND\$50 under threat of deportation and withheld wages from work at Massutera Engineering, despite payments having been received. Rasel Mia lodged a complaint with the Bangladesh High Commission in January 2021. Investigations confirmed D1 had trafficked him by deception for forced labour.

7. *For the Second Charge.*

Between January 2018–July 2019, D1 recruited his cousin’s husband Nabir, promising a driver’s job in Brunei at BND\$500–550 per month with good housing. D1 demanded 300,000 Taka, paid via his mother. Nabir arrived in Brunei on 7th July 2019, but instead of a driver’s job, he was unemployed for three months before directed to cable-laying work. After periods of unemployment, he sought his own jobs, which D1 disrupted, later forcing him into other roles. His passport remained with D1. D1 also withheld Nabir’s wages for work at Massutera Engineering. Nabir joined Rasel Mia’s complaint in January 2021. Investigations found D1 had trafficked him by deception and exploitation.

8. *For the Third Charge.*

Between January 2018–April 2019, D1 recruited relative Mohammad Parvaj Miah, promising a pick-up driver job at BND\$700–750 per month. Large payments were made to D1 through his family. Arriving in Brunei on 28th April 2019, Parvaj’s passport was confiscated. No driver job was provided, and he had to find odd work while paying D1 BND\$50 monthly. Later forced to work under Massutera Engineering without full wages. He too made a complaint in January 2021. Investigations confirmed D1 had trafficked him by deception for forced labour.

9. For the Fourth Charge.

Between January 2018–April 2019, D1 recruited Kawsar Miah, promising him a welder’s job at BND\$25 per day plus overtime. D1 collected 260,000 Taka from him. On arrival (29th April 2019) his passport taken by D1 and he was placed in overcrowded housing. He was made to work as a scaffolding helper at BND\$16 per day which was contrary to what D1 promised. Often unemployed, he found his own work but still had to pay D1 BND\$50 monthly. At Massutera Engineering, D1 deducted and later withheld wages despite receiving company payments. Kawsar Miah also complained in January 2021. Investigations confirmed D1 had trafficked him for forced labour.

10. For the Fifth Charge.

Between January 2018–April 2019, D1 recruited his neighbour Mokhter Hossain, promising carpentry at BND\$23–24 per day plus overtime. D1 demanded 250,000 Taka. On arrival to Brunei on 29th April 2019, his passport taken from him by D1 and he was housed at Kampung Masin. He was instead made to do metal grinding at BND\$17 per day. He quit the job which left him unemployed, surviving by gardening jobs, while paying D1 BND\$50 monthly. At Massutera Engineering, he received only partial wages. He too lodged a complaint in January 2021. Investigations confirmed deceptive recruitment and exploitation amounting to trafficking.

11. For the Sixth Charge.

Between January 2018–March 2019, D1 recruited Mohammed Abdur Rauf, promising an oil & gas job at BND\$500–600 per month. D1 demanded 300,000 Taka, partly paid through an intermediary. On arrival in Brunei on 17th October 2019, his passport was confiscated by D1, and he remained unemployed for four months, surviving on family remittances and odd jobs. He later worked as a farmer and nursery worker, but D1 still demanded BND\$50 monthly. He was then forced by D1 to leave nursery job to work at Massutera Engineering, where wages were withheld. He lodged a complaint in January 2021. Investigations confirmed D1 trafficked him through deception and forced labour.

12. D1 has previous convictions under Sections 293B and 354 of the Penal Code, Chapter 22.

III Mitigation

13. Mitigation was pleaded on his behalf by counsel, Mr. Daud Ismail.

14. He is 46 years of age, married with three young children who are wholly dependent on him. His wife is in poor health requiring ongoing treatment. He has worked in Brunei for over a decade as the family’s sole breadwinner, and his continued incarceration has cause hardship to his dependents.

15. The Defendant had pleaded guilty to all six (6) charges. Although D1 did not pleaded guilty at the earliest opportunity, nevertheless it is submitted that this change of plea reflects a genuine remorse, an acceptance of responsibility, and a desire not to further burden the court or witnesses with a lengthy trial.
16. The Defendant has been in remand since November 2021 and should be credited with that period. Counsel referred sentencing precedents under the Trafficking and Smuggling of Persons Order, where terms of between four to six years' imprisonment, together with strokes of the cane and fines ranging from nominal sums to \$5,000, have been imposed. The Defendant ask that the present case ought to fall within that established tariff and that concurrent sentences across all six charges would be just and in line with the totality principle.
17. The Defendant prayed for leniency, urging that the Court temper justice with mercy, impose the lowest custodial term permissible in law, order concurrency, and backdate the sentence to the date of remand.

IV Aggravating factors

18. This was not a case of a single isolated incident. The Defendant recruited no fewer than six victims, all of them fellow Bangladeshi nationals, through false promises of lucrative employment and good living conditions in Brunei. Each of these men was deceived into paying large sums of money to the Defendant, in the hope of improving their own lives and that of their families. The presence of multiple victims greatly increases the seriousness of the offence. It demonstrates that the Defendant's conduct was not opportunistic or confined to a single act, but a sustained pattern of exploitation that preyed upon a group of vulnerable men. The greater the number of victims, the more extensive the harm, and the stronger the public interest in imposing deterrent sentences to protect other potential victims from similar exploitation.
19. The victims endured significant hardship as a direct consequence of the Defendant's deception. To meet the Defendant's financial demands, they were compelled to sacrifice what little they had. Some sold livestock, crops, or family businesses; others borrowed money from relatives or took out bank loans. These were not wealthy men with savings to spare. They were poor farmers and labourers, motivated by the prospect of stable employment in Brunei to secure a better future for their families. In reality, their sacrifices left them indebted, destitute, and vulnerable. Instead of the promised employment, they found themselves unemployed or underemployed, subject to irregular pay, and trapped in conditions of dependency with their passports confiscated. The Defendant not only deceived them but also left them to carry the crushing burden of financial ruin and broken hopes. Such hardship is a serious aggravating factor.
20. The offences were not confined to a brief interval but occurred over a period of more than a year, between January 2018 and March 2019. This prolonged time shows that

the Defendant was not acting on impulse, but rather engaged in a deliberate and sustained course of conduct. Over time, he recruited successive victims in order to build up what the Prosecution aptly described as a “*pool of workers*” whom he could deploy as required for projects secured from other companies. Such systematic recruitment reveals a level of planning and persistence that aggravates the gravity of the case. It was not an accidental overlap of circumstances, but a calculated exploitation spanning an extended period.

21. At the time of the offences committed, the Defendant was employed as a Project Manager. Instead of conducting himself responsibly, he abused that position of trust and responsibility to facilitate the unlawful recruitment and exploitation of fellow nationals. This aggravated breach of trust is particularly serious. Employers and project managers are expected to protect and promote the welfare of those under their supervision, not to exploit them for personal gain. The Defendant’s conduct represents a gross misuse of his professional role and adds weight to the culpability of his actions.
22. Finally, the Prosecution reminded the Court that trafficking in persons is not an ordinary offence but a grave violation of fundamental human rights. It subjects victims to the absolute control of traffickers, stripping them of autonomy and reducing them to mere tools for exploitation. It is a crime that dehumanises, treating human beings as commodities. Such conduct undermines not only the lives of individual victims but also the wider social fabric, eroding Brunei’s commitment to dignity, fairness, and the protection of vulnerable persons. The Court must mark its disapproval with sentences that adequately reflect the gravity of the crime and serve as a stern deterrent to others who may contemplate such conduct.

V Other Considerations

23. Although the Defendant has now entered a plea of guilty, it was not tendered at the earliest opportunity. He only changed his plea after the Prosecution had already called four of the six victims to give evidence in Court. These men had to recount their painful experiences, reliving the humiliation and trauma they had endured at the hands of the Defendant. The law recognises that while a guilty plea is generally a mitigating factor, its weight diminishes the later it is entered. In this case, the timing of the plea means that it provides less credit to the Defendant. The victims had already been put through the ordeal of testifying, and the Court and Prosecution had expended significant time and resources in conducting the trial. The Prosecution submitted that, in such circumstances, minimal discount, if any, should be given.
24. The Prosecution further submitted that this is not a case where the “*one transaction rule*” ought to apply. The offences committed were not part of one singular event, but rather a series of distinct acts carried out against different victims, at different times, and over a prolonged period. To treat them as if they were a single transaction would fail to reflect the enhanced culpability arising from the multiplicity of the offences.

Each victim was separately deceived, separately harmed, and separately exploited. The Court is therefore invited to consider consecutive sentences in order to ensure that the overall punishment properly reflects the totality of the Defendant's offences.

25. Enhancement of sentence for subsequent offence, to date have been largely applied in the context of sexual offences, reflecting the pressing need for deterrence and public protection in that sphere. It has not yet been widely or rapidly extended to other categories of offences, such as trafficking in persons. Nevertheless, the existence of this provision, and the trend in the case law, is a matter which this Court must remain mindful of. Whether its scope ought to be broadened beyond sexual cases is a question for gradual judicial development, but for present purposes it is enough for the Court to recognise the principle, while fixing sentence according to the established tariffs and the specific facts of this case.
26. The Defendant's previous conviction for offences under *Section 293B* and *Section 354* of the *Penal Code CAP 22* are sexual offences in nature¹. I thus would not consider him as a second offender for the current offences. However, that conviction is relevant in so far as to take into consideration, for the purpose of sentencing, the time the Defendant has been incarcerated, as this trial commenced during the period he spent serving that sentence, and then some.

VI Case Authorities

27. I refer to *PP AND Sudjai Sinthorn* (Crim Trial No.6 of 2012). Here the Defendant had pleaded guilty of an offence under section 6 of the Order. The High Court had a starting point of "6 years' imprisonment and a fine of \$30,000 or (30 month's imprisonment in default of payment) with corporal punishment of 3 strokes" which was reduced to "4 years' imprisonment and a fine of \$20,000 (or 20 months' imprisonment in default of payment) with 2 strokes"² for his guilty plea. This approach to sentencing was applied in the intermediate case of *PP v Piyaporn Sodadee and 3 others* (Criminal Trial No.15 of 2016)³
28. Although these cases are for offences under section 6 of the Order, the punishment for both Section 4 and Section 6 of the Order are similar.

VII Conclusion and Sentence

29. In weighing sentence, I have considered both the aggravating and mitigating features of this case. On the one hand, there are substantial aggravating factors: the offences involved six victims, each deceived and exploited over a prolonged period; the victims suffered severe financial and personal hardship; the Defendant acted in abuse of his position as project manager; and his plea of guilty was only entered late in the

¹ Khairul Basha AND PP Crim Appeal No.3 of 2022 (Court of Appeal)

² PP AND Sudjai Sinthorn [2012] BLR 184 at pp186

³ PP AND Piyaporn Sodadee and 3 others (Crim Trial No.15 of 2016) at pp5

proceedings, after several victims had already given evidence. These matters significantly heighten his culpability and call for a longer custodial sentence.

30. On the other hand, I also take account of the mitigating factors advanced. The Defendant has now entered a plea of guilty and accepted responsibility for his conduct, albeit belatedly. He has expressed remorse, and his counsel has drawn attention to his personal circumstances, including his role as sole breadwinner for his family in Bangladesh, his wife's poor health, and the hardship his dependents would face in his absence. While such considerations cannot excuse the offences, they remain relevant in deciding his sentence.
31. Balancing these competing factors, the aggravating circumstances clearly outweigh the mitigation. Nevertheless, the guilty plea and the Defendant's family circumstances are entitled to some weight in tempering what would otherwise be an even more severe sentence. The final sentence must therefore reflect the seriousness of the offences committed, uphold the statutory intent of deterrence and denunciation, while still recognising the limited mitigation available.
32. My starting point for each of the charges shall be that of 6 years' imprisonment, fine of \$30,000 (in default of which 15 months' imprisonment) and 3 strokes whipping. For his guilty plea, his sentence is reduced to 5 years and 6 months, fine of \$20,000 (in default of which 10 months' imprisonment) and 2 strokes whipping.
33. Taking into consideration, the totality of sentence, I order that his sentence are to run concurrently, but the final 2 years of the 6th charge to run consecutively, strokes to be cumulative. This would bring his sentence to 7 years and 6 months, fine of \$120,000 (in default 60 months' imprisonment) and 12 strokes. He is afforded 3 months grace period to settle the fine in full. Failure to do so, in default sentence shall run consecutively to the imprisonment sentence.
34. His sentence is backdated to the start date of his previous prison term.

MUHAMMED FAISAL BIN PDJLD KOL(B) DSP HAJI KELI
Judicial Commissioner