

**Public Prosecutor**

AND

**Shane Langnelian Enau**

---

**(High Court of Brunei Darussalam)  
(Criminal Appeal No. 12 of 2024)**

---

Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, JC

**Date of Ruling: 30<sup>th</sup> November 2024**

**Headnote:** *Criminal Law – bail – appeal by Prosecution against Magistrate decision to grant bail – appeal allowed*

DPP Pengiran Hjh Nor'Azmeena binti Pengiran Hj Mohiddin for Public Prosecutor.  
Mr. P. Roy Prabhakaran and Mr. Brandon Chin (M/S Messrs Yusof Halim and Partners) for the Defendant.

**Cases cited:**

*Hj Sadikin v PP*, CM No.1 of 2001 (High Court)

*Md Zainul Ariffin bin Munaf v PP*, CM No.4 of 2024 (High Court)

*Ardy Salleh v PP*, Criminal Appeal No.7 of 2019

*PP v Mohd Aizamry Bin Nasri*, Criminal Appeal No.13 of 2015

**RULING**

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

Prosecution's Appeal Against the Decision to Grant Bail to the Respondent, Shane Langnelian Enau.

**I Background and Context**

This appeal concerns the decision of the Magistrate, who granted bail to the respondent, Shane Langnelian Enau, on June 15, 2024, under a set of stringent conditions. The prosecution appeals against this decision, presenting a series of arguments focused on the gravity of the charges, the risk of absconding, and the strength of the prosecution's case. The respondent asserts that the Magistrate, having weighed the facts and exercised her discretion, correctly granted bail.

## II Appellant's Arguments

The prosecution's primary grounds of appeal are as follows:

### 1. Seriousness of the Charges

The respondent is charged with importing 2,038.59 grams of methylamphetamine and 3,071.2 grams of cannabis, quantities that greatly exceed the thresholds for capital punishment under the Misuse of Drugs Act. As the prosecution highlighted, bail is rarely granted in death penalty cases, as seen in *Hj Sadikin v PP*<sup>1</sup>. Given the severe nature of the charges, the prosecution argues that denying bail is warranted to safeguard public interest and ensure accountability.

### 2. Risk of Absconding

Although the respondent is a Brunei citizen with local ties, the prosecution contends that these connections are insufficient to counterbalance the potential flight risk given the capital charges. The high likelihood of severe penalties presents a strong incentive for absconding, as demonstrated in *Md Zainul Ariffin bin Munaf v PP*<sup>2</sup>, where the appellate court found that local ties alone are often insufficient when such grave charges are involved.

### 3. Strength of the Prosecution's Case

The prosecution contends that the evidence against the respondent is substantial, given the presumption of trafficking under *Section 16 of the Misuse of Drugs Act*. The respondent's own statements, acknowledging his role as a "runner" for an acquaintance named Athirah, are significant, as they demonstrate his awareness of her involvement in drug-related activities. Additionally, the respondent's claim of ignorance about the contents is contradicted by the circumstances of the case and by corroborative statements from customs officers. Although an analyst certificate is still pending, the prosecution argues that this delay does not diminish the strength of the case against the respondent, as seen in *Public Prosecutor v Ardy Salleh*<sup>3</sup>.

### 4. Failure to Consider All Relevant Factors

The prosecution submits that the Magistrate failed to consider all factors highlighted in the Sadikin case when assessing whether bail was appropriate. Although the Magistrate exercised discretion, the appellant argues that this

---

<sup>1</sup> CM No.1 of 2001 (High Court)

<sup>2</sup> CM No.4 of 2024 (High Court)

<sup>3</sup> Criminal Appeal No.7 of 2019 (COA)

exercise was flawed because not all relevant elements were evaluated in the bail decision.

### **III Respondent's Arguments**

In response, the defence submits that the Magistrate's decision to grant bail was based on a careful weighing of all relevant factors, including the stringent conditions imposed. The respondent advances the following main points:

1. Magistrate's Exercise of Discretion

The respondent argues that this case concerns the Magistrate's lawful exercise of her discretion in determining bail and not an issue of changed circumstances. The defence emphasizes that the appellate court should not interfere unless there is clear evidence that discretion was improperly exercised. The respondent asserts that the Magistrate duly considered the facts before making her decision.

2. Lack of Evidence of Flight or Interference

The defence maintains that the respondent has consistently complied with bail conditions for several months and that there is no evidence of flight risk or interference with witnesses. They note that key witnesses, such as customs officers, are law enforcement personnel, minimizing the potential for interference. Furthermore, Athirah, an alleged accomplice, is in remand, making interference unlikely.

3. Delay in the DSS Report

The respondent argues that the delay in obtaining an analyst certificate has unjustly prolonged pre-trial detention. Citing *Mohd Aizamry Bin Nasri*<sup>4</sup>, the defence suggests that this delay results in undue hardship and should be a consideration in favour of maintaining bail.

### **IV Analysis**

Appellate courts typically refrain from interfering in the exercise of discretion by lower courts unless there has been a clear error in principle or a failure to consider essential factors. In this case, however, the Magistrate's decision to grant bail overlooked critical considerations.

1. Incomplete Consideration of Relevant Factors

---

<sup>4</sup> Criminal Appeal No.13 of 2015 (High Court)

The prosecution rightly argues that not all elements of *Sadikin* were considered. The risk of absconding, the strength of the evidence, and the particular public interest in capital drug cases collectively form a compelling case against bail. The learned Magistrate, while exercising discretion, did so without fully evaluating these factors in the context of a death penalty charge, a circumstance that demands heightened judicial scrutiny.

2. Incentive to Abscond

Given the weight of the charges, the respondent's local ties are insufficient to counteract the inherent flight risk. The imminent possibility of capital punishment provides a powerful incentive to abscond; although the respondent has complied with bail conditions thus far, compliance alone does not mitigate the overarching risk when balanced against the gravity of the charge.

3. Delay in the DSS Report

Although the defence has argued that the delay in obtaining the analyst certificate should support maintaining bail, this delay is not indefinite, and a timeline has been provided. Delay in processing evidence, especially in cases involving capital charges, should not result in a weakened prosecution stance or be determinative of bail.

4. Strength of Prosecution's Case

The respondent's admissions and corroborating evidence support the prosecution's contention of having a strong case against the defendant. The presumption of trafficking applies due to the drug quantities, shifting the burden to the respondent to rebut this presumption. This bolsters the prosecution's argument that, on the balance of probabilities, the respondent's release on bail is not justified.

## V Conclusion

Having considered the submissions, it is evident that the Magistrate erred in her approach by not addressing all relevant factors in her decision to grant bail. The combination of the gravity of the offence, the flight risk, and the prosecution's strong case supports a reversal of the bail decision.

Therefore, I find that the appeal should be allowed, and the Magistrate's decision to grant bail is hereby overturned. The respondent's bail is revoked and he shall remain in custody pending trial and until the conclusion of trial.

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

