

Hazli bin Salleh

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 15 of 2024)**

Hj Abdullah Soefri Bin POKSM Dato Seri Paduka Hj Abidin, J.C.
18th January, 2025

Criminal Law – Misuse of Drugs Act – 3 counts of consumption under section 6(b) – fines imposed and grace period of 6 months given – appeal for extension of grace period – factors to be considered – appeal dismissed

Appellant/Defendant in person and unrepresented.
DPP Nurul Husna Aqilah binti Haji Abidin for the Public Prosecutor/Respondent.

Cases cited:

Rosani binti Rabaha v Public Prosecutor [High Court Criminal Appeal No. 14 of 2013]

Chia Kah Boon vs Public Prosecutor [1999] 4 SCR 72

Aisah binti Mohd Zaini v P.P [HCCA No. 28 of 2011]

Sepinah binti Hj Sa'at [HCCA No. 29 of 2011]

JUDGMENT

Hj Abdullah Soefri, J.C.:

INTRODUCTION

The Appellant was charged in the Magistrates Court on the 30th July 2024 for 3 charges under the Misuse of Drugs Act, Chapter 27. All the charges are for consuming a Class A controlled drugs, Methylamphetamine, pursuant to section 6(b) of the said Act. The first charge is for on 30th day of November 2020, the second charge is for on 13th day of December 2020 and the third charge is for on 11th day of January 2022.

The Appellant pleaded guilty to all the charges and admitted and agreed to the statement of facts that was read to him. The Magistrate imposed a fine of \$2000 in default of 4 months for each charge which is to run consecutively and bringing to the total of \$6000 in default of 12 months

imprisonment. The Magistrate ordered for the fines to be fully settled on the 30th January 2025 at 10a.m which is equivalent of 6 months grace period.

APPELLANT'S SUBMISSION

Appellant appeals for the extension of grace period only.

The grounds of appeal are as follows:

1. Salary is insufficient to pay the fines in 6 months as he is only earning \$530 per months and he worked as a storekeeper.
2. He has family commitment. He has to support his children in their schooling and his wife is not working and a full-time housewife.
3. He has a deduction for SPK [TAP].
4. He has deduction to pay for his housing in Lugu.

RESPONDENT'S SUBMISSION

The Respondent submits that the sentence imposed is not manifestly excessive for a first offender and the 6 months grace period given by the Magistrate is an ample and sufficient period of time to settle the fine in full.

The Respondent submits further that even though the Respondent does sympathize with the Appellant's financial situation, however it has been established that financial hardship is not a factor to be considered.

The Respondent referred to the case of *Rosani binti Rabaha v Public Prosecutor* [High Court Criminal Appeal No. 14 of 2013], where the court made references to the deterrent objectives of fines in the judgement *Chia Kah Boon vs Public Prosecutor* [1999]4 SCR 72, where Yong Pung How, C.J held:

“on the one hand, fines had to be of an amount which the appellant could reasonably pay given his financial means. On the other hand, the fines had to be fixed at a level which would be sufficiently high to achieve the dual objectives of deterrence, in terms of deterring both the appellant and other importers...”

The Respondent submits that a longer grace period would dilute the deterrent element of the sentence. Further, a longer time to pay the fine would be oppressive to the Appellant and would be an administrative burden to the court by collecting every month over a longer period.

The Respondent further submits that if the Appellant is allowed to pay a minimal amount in instalment, it will take a long period of time to complete the payment of fine.

The Respondent also highlight the case of *Aisah binti Mohd Zaini v P.P* [HCCA No. 28 of 2011] and *Sepinah binti Hj Sa'at* [HCCA No. 29 of 2011] that:

“a two-year period will seldom be too long and in an appropriate case three years will be unassailable.”

The Respondent conclude that the sentence imposed on the Appellant is in line with what the law as prescribed and that the grace period is proper and urged the Court to dismiss the Appellant’s appeal and uphold the sentence of the lower court.

CONCLUSION

In this case the Appellant is appealing to this Court for the extension of the grace period. He is not appealing against the total fines and the in-default sentence that was imposed on him by the Magistrate. As to the fine and in default sentence, I find that it is neither lenient nor manifestly excessive.

The question now is whether the 6 months grace period that will expire on the 30th January 2025 at 10am that was given by the Magistrate is sufficient or should this court disturb the decision of the Magistrate below? The main aims of sentencing are for deterrence and rehabilitation. If the instalment is given and for a long period, I agree with the Prosecution that it will dilute the effect of deterrence. It is noted that the Appellant committed the same offence 3 times and the latest being in 2022.

In *Aisah Binti Mohd Zaini V P.P* (HCCA No. 28 of 2011) and *Sepinah Binti Hj Sa'at* (HCCA No. 29 of 2011) where it was held that,

“...a lengthy period for the payment of a fine is undesirable. It can become psychologically oppressive for the offender to constantly have to (a) live under the threat of imprisonment being imposed at any time in default of payment of the fine, and (b) worry about finding the means to pay the fine. Recovery of the fine over a long period may also be administratively challenging”

Further, if this Court is to extend the grace period and allow him to pay by instalment, it will not give the right message to him, the public and others.

By allowing this appeal, it is as if that this Court does not agree with the decision of the Court below which is not faulty and the grace period given is generous. By allowing the appeal, this Court will give a wrong signal to the public that the sentence is negotiable and will thus dilute the deterrence and rehabilitative element of sentencing.

Thus, in safeguarding the deterrence and rehabilitative elements of sentencing and that the grace period of 6 months given is proper but generous, the appeal is dismissed. The Appellant is to pay

the remaining balance of the fine in full by the 30th January 2025 by 10am and failure to pay in full, the Appellant is to serve the in-default imprisonment sentence.

Appeal is Dismissed.

Haji Abdullah Soefri Bin Poksm DSP HJ Abidin
Judicial Commissioner