

Mohamad Yahya Bin Haji Modin

AND

Public Prosecutor

**(High Court Of Brunei Darussalam)
(Criminal Appeal No 8 of 2025)**

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

Date of Ruling: 12th May 2025

Headnotes: - Bail application – Offences against property – defendant has numerous previous convictions since 1990 – strong familial bond seen in applicants’ favour – previous conviction seen in proper context and not in entirety

Appellant In Person.

PO Jordan Tiah Teck Chiun for Public Prosecutor.

Statute:

Section 380 of the Penal Code

RULING

Muhammed Faisal, J.C.:

INTRODUCTION AND BACKGROUND

1. This is an appeal by the Appellant, Mohamad Yahya bin Haji Modin, against the decision of the Magistrates' Court dated 19 April 2025 refusing his application for bail.
2. The Appellant was arrested on 14 April 2025 in connection with an offence under Section 380 of the Penal Code, Chapter 22, read with Section 34, for theft committed in a residential dwelling on or about midnight on 7 November 2024. He was brought before the Magistrates' Court on 16 April 2025, charged jointly with Awangku Harris Fadillah bin Pengiran Ahmad Pedilah (2nd Defendant in MCCT/BSB/127/2025).
3. The Prosecution initially preferred a holding charge and applied for police remand, which was granted. Upon his return to court on 19 April 2025, the Prosecution applied for further remand pending the finalisation of charges. The Appellant applied for bail, which was denied by the Magistrate.
4. This appeal was filed by the Appellant's wife on his behalf.

GROUND OF THE APPELLANT'S APPLICATION

5. The Appellant submitted that he has complied with past bail conditions, including during a serious charge in which he was previously granted High Court bail. He highlighted that he did not breach any such conditions.
6. He contended that his co-accused, Awangku Harris, was released on bail despite being recently released from prison and involved in other matters.
7. The Appellant emphasized his strong personal ties, the need to care for his family, and the absence of recent criminal conduct since his last conviction over a decade ago.

PROSECUTION'S GROUNDS FOR OBJECTING TO BAIL

8. The Respondent objected to bail on three main grounds:

i. Risk of Reoffending:

- The Prosecution submitted that the Appellant had a significant criminal history, including offences against property dating back to 1990 and convictions under Section 380 in 2012.
- Although the current prosecution is proceeding on a single consolidated charge, the existence of multiple investigation papers was emphasised to support the argument of a recurring pattern of behaviour.

ii. Strength of the Case:

- A co-defendant (Awang) implicated the Appellant as present during the commission of the offence.
- An independent witness confirmed picking up both the Appellant and Awang around the time of the alleged incident and could positively identify the Appellant.
- The stolen items were recovered and identified by the complainant.

iii. Risk of Interference:

- The Prosecution argued that the Appellant might interfere with the co-accused, who is out on bail, potentially influencing or aligning testimony.

- There was concern the Appellant may attempt to contact a prosecution witness whom he has previously seen, thereby jeopardising the integrity of the trial.

PERSONAL AND FAMILY BACKGROUND OF THE APPELLANT

9. The Appellant is 52 years old, married since 1998, and is a father to nine children aged between approximately 7 and 27 years.
10. He resides with his family in Perpindahan Meragang in a home he owns. His wife is a government school teacher working in Limbang, Malaysia, and he drives her to work due to her lack of a driving licence.
11. Three of his children serve in the military, one is about to enter university, and the others are in secondary and primary school. One child has special needs.
12. The Appellant is unemployed but plays a critical caregiving and logistical role in supporting his family's daily functioning.

DISCUSSIONS

13. In hearing this appeal, I took time to carefully consider the Appellant's past and present conduct. I observed that the Appellant's earliest offence occurred in or around 1990, at which point he was likely still a juvenile—possibly 16 or 17 years old. That record, while relevant, must be seen in its proper context.
14. I further noted that most of the Appellant's convictions took place prior to his marriage in 1998. Since then, there have only been two convictions, in 2008 and 2012, and none in the past decade.
15. What stood out most strongly to me is the compelling nature of the Appellant's family circumstances. He and his wife have raised nine children, three of whom serve the nation in military service. One child is preparing to enter university, and others remain in school. One child has special needs. The Appellant helps care for his wife, who works across the border, and ensures his children get to school.
16. In my view, this is not the typical background of a person who is a repeat offender. Many who have past convictions do not go on to raise a family so diligently, or support children who in turn commit themselves to national service.
17. I remarked during the hearing that most people with such convictions would never achieve what the Appellant has achieved with his family. His commitment to

supporting his wife and children, including a special needs child, is evident. There is strength, devotion, and resilience that shines through his story.

18. Justice requires both accountability and perspective. While previous convictions must be considered, they should not weigh indefinitely on an individual's life, particularly when their more recent conduct shows positive transformation and strong familial responsibility. In other words, while the law must never be blind to past wrongs, it must also not be deaf to redemption and present integrity.

CONCLUSION

19. I have considered the grounds of appeal and the objections raised by the Prosecution, including concerns about the risk of reoffending, the strength of the case, and the potential for interference with witnesses or co-defendants. These are valid concerns that cannot be dismissed lightly.
20. However, I also recognise that bail is not to be denied as a form of punishment. It is a balancing exercise, and in this case, I find the Appellant's demonstrated family responsibility, his long-standing compliance with past bail conditions, and his extended period of good behaviour to weigh significantly in his favour.
21. I am satisfied that the Appellant understands the seriousness of the matter before him, and that the risk of him breaching any bail condition is low. His sense of duty toward his family is, in my view, a strong assurance that he will comply fully if released.
22. I therefore find that the risk of flight, reoffending, or interference can be managed with appropriate bail conditions.
23. In the circumstances, this appeal is allowed. Bail is granted to the Appellant, subject to conditions to be determined.

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