

Kho Wan Thin

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 23 of 2019)**

Steven Chong, C.J.
26 December 2019

Bail – Capital charge – Risk of absconding – Bail denied.

Roy Prabhakaran (M/S Yusof Halim & Partners) for the Appellant.
DPP Dk Didi-Nuraza Bte Pg Latif for the Public Prosecutor/Respondent.

Cases cited:

Hj Sadikin Bin Hj Ahmad v Public Prosecutor [2001] 1 JCBD 349
Jerry Wong v Public Prosecutor [2006] 2 JCBD 32

Steven Chong, C.J.:

The Appellant appeals against Magistrate Pg Hazirah Binti Pg Mohd Yusof’s decision refusing bail to her.

On 11 June 2019 in the Magistrate’s Court the Appellant and two other defendants were charged with the possession of 2.078 kg of methylamphetamine for the purpose of trafficking in contravention of section 3A of the Misuse of Drugs Act.

The penalty for the offence is death.

In the Grounds of Appeal it is contended:

1. The Magistrate failed to properly take into consideration that the inability of the Department of Scientific Services to prepare an analyst certificate in a timely manner has “put the Appellant in undue hardship and abused the judicial process” as the Appellant has been in remand for over five months.

2. The Magistrate failed to properly consider the factors propounded in the case of *Hj Sadikin Bin Hj Ahmad v Public Prosecutor* [2001] 1 JCBD 349.

Counsel for the Appellant submits that the following factors favour the grant of bail.

First, four persons, including the Appellant, were arrested in the car in which the alleged drug was found. The Appellant was one of the passengers in the car. She made an exculpatory statement after her arrest explaining she came to Brunei Darussalam from Miri to buy a second hand car. This narrative was supported by the two co-defendants.

Second, there is no DNA or fingerprint evidence linking the Appellant to the drug found in the car.

Third, the Appellant's aunt who is local is willing to be her suretor to ensure her attendance in court. In *Jerry Wong v Public Prosecutor* [2006] 2 JCBD 32, bail was granted to the defendant, a Malaysian woman from Miri, facing a capital drug trafficking charge.

Fourth, the analyst certificate concerning the alleged drug is still not available nearly seven months after the Appellant's arrest.

The Deputy Public Prosecutor on the other hand contends that the Appellant is a flight risk and the following factors militate against granting bail.

First, the Appellant faces a capital charge. "In a case in which the death penalty can be given it is very rare for bail to be given": see *Hj Sadikin Bin Hj Ahmad v Public Prosecutor* [2000] 1 JCBD 349, per Roberts, CJ at 350.

Second, the Appellant is a foreign national. Her son lives in Miri while her boyfriend who she had been living with until recently is in New Zealand.

Third, the Appellant was in possession of crystalline substances in her handbag at the time of her arrest.

Fourth, narcotics officers found empty transparent packets of the kind believed to be used for the storage of drugs and an instruction manual for a digital weighing scale in the Appellant's rental flat.

The Magistrate was fully alive to the factors both for and against the grant of bail and having given careful consideration to them concluded there was a real risk of the Appellant absconding. Bail was therefore denied.

On the evidence before the Magistrate this court cannot say she was wrong to arrive at that conclusion. The facts here are different to that in *Jerry Wong's* case.

The appeal is dismissed accordingly.

DATO SERI PADUKA STEVEN CHONG
Chief Justice