

Case Digest

Secretary for Justice v Ho Kai Ming Calvin (何啟明)

HCCP 112/2021; [2021] HKCFI 864

(Court of First Instance)

(Full text of the Court's reasons for decision in English at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=134797&QS=%2B&TP=JU)

Before: Hon Toh J

Date of Hearing: 15 March 2021

Date of Reasons for Decision: 9 April 2021

Bail – conspiracy to commit subversion contrary to NSL 22(1)(3) and ss. 159A and 159C of Crimes Ordinance (Cap. 200)

1. The Respondent was charged with one count of conspiracy to commit subversion contrary to NSL 22(1)(3) and ss. 159A and 159C of the Crimes Ordinance (Cap. 200) in relation to a scheme by the Respondent and others to undermine the “proper functioning of the Legislative Council so as to paralyse the operations of the HKSAR government, eventually compelling the Chief Executive of HKSAR to resign”. The SJ applied to the Court for a review under s. 9H of the Criminal Procedure Ordinance (Cap. 221) (“CPO”) after the Chief Magistrate had granted bail to the Respondent.

2. Held, the application refused and bail granted on the same terms and conditions as laid down by the Chief Magistrate, after applying NSL 42(2) and the CFA’s decision in *HKSAR v Lai Chee Ying* [2021] HKCFA

3. On the first of the two thresholds laid down in that decision, the Court, following the decision of Anthea Pang J (as she then was) in *HKSAR v Lai Chee Ying* [2021] HKCFI 448, carried out “a predictive and evaluative exercise” on all the materials before it, including the parties’ submissions and materials which might not be admissible in

evidence. It was satisfied that there were sufficient grounds for believing that the Respondent would not continue to commit acts endangering national security if bail was granted to him. The Court then considered the second threshold which was under the CPO, with the deciding principle being whether the Respondent would surrender to custody as the Court might appoint. On that issue, the Court was satisfied that the bail conditions imposed by the Chief Magistrate would ensure that the Respondent would surrender to custody as the Court might appoint, and minimize the risk, if any, of his re-offending or absconding*.

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* Editor's note: The Court's reasons for decision did not set out the details of the bail conditions.