

Case Summary

HKSAR v Wan Yiu Sing Edmund (尹耀昇)

HCCP 143/2021; [2021] HKCFI 1261

(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=135727&QS=%28hccp%7C143%2F2021%29&TP=JU)

Before: Hon Toh J

Date of Hearing: 25 March 2021

Date of Reasons for Decision: 13 May 2021

Bail – sedition offence under s. 10(1)(a) of Crimes Ordinance (Cap. 200) – application of Criminal Procedure Ordinance (Cap. 221) and NSL 42(2) – relevant considerations

Background

1. The Applicant was an online radio host. He was charged with four counts of doing an act with a seditious intention, contrary to s. 10(1)(a) of the Crimes Ordinance (Cap. 200). It was the Prosecution's case that the alleged acts continued even after the promulgation of the NSL on 30 June 2020. He applied to the Court for bail after his bail application had been refused by the Chief Magistrate.

Major provision(s) and issue(s) under consideration

- NSL 42(2)
- Criminal Procedure Ordinance (Cap. 221) (“CPO”), Part IA

2. The Court examined whether the CPO or the NSL should apply in considering the present bail application and whether this was a suitable

case for bail.

Summary of the reasons for decision

3. Although the Prosecution pointed out that the alleged offences were committed against national security and therefore the NSL instead of the CPO would apply when considering bail, the Court gave the benefit of doubt to the Applicant in view of the fact that he was charged under the Crimes Ordinance and not under the NSL, thus proceeding to consider his bail application under the CPO. (para. 15)

4. In considering bail under the CPO, the most important factor was whether the Applicant might fail to surrender to custody as the Court might appoint. Factors to consider included the seriousness of the charge, the strength of the evidence and the risk of absconding. Given that the evidence appeared strong, the charges were very serious and the Applicant appeared to be well connected to various organizations in Taiwan, the temptation of absconding was extremely high. So the Court did not consider that this was a suitable case for bail. (paras. 16 and 17)

5. Nonetheless, the Court proceeded to consider bail under the NSL and therefore the two thresholds in relation to bail as laid down by the CFA in *HKSAR v Lai Chee Ying* [2021] HKCFA 3. In considering the first threshold, the Court had to make a predictive and evaluative exercise as in *HKSAR v Lai Chee Ying* [2021] HKCFI 448. It was only if the Applicant had passed the first threshold that the Court would consider the second threshold which would be consideration under the CPO. As there were not sufficient grounds for believing that the Applicant would not continue to commit acts endangering national security if bail was granted, the Court considered that the Applicant would have failed the first threshold in any event. (paras. 14 and 18)