

Case Digest

HKSAR v Fan Kwok Wai Gary (范國威)

HCCP 454/2021; [2021] HKCFI 3109

(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=139818&QS=%28hccp%7C454%2F2021%29&TP=JU)

Before: Hon Toh J

Date of Hearing: 7 September 2021

Date of Reasons for Decision: 2 November 2021

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

1. The Applicant 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 Applicant 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 Applicant applied to the Court for bail under s. 9J of the Criminal Procedure Ordinance (Cap. 221), after refused bail twice by the Chief Magistrate.

2. Held, bail refused. Applying NSL 42(2) and the CFA's decision in *HKSAR v Lai Chee Ying* [2021] HKCFA 3, the Court had to first consider whether there were sufficient grounds for believing that the Applicant would not continue to commit acts endangering national security if he was granted bail. When making this decision, the Court had done a “predictive and evaluative exercise” based on the various matters brought to its attention, as decided by Anthea Pang J (as she then was) in *HKSAR v Lai Chee Ying* [2021] HKCFI 448. Following Anthea Pang J's dicta in that case that “a determined and resolute person” might

be more likely to transgress than one who was not, the Court held that having (a) watched videos showing the Applicant advocating in a determined manner for the government to accede to the “five demands” and repeating those demands even after the “35+ Primaries”, and (b) listened to what the Applicant had said, it was left with the conclusion that if granted bail, the Applicant would continue to commit acts endangering national security.

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