IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2025] SGCA 15

Court of Appeal / Criminal Motion No 51 of 2024

Between

Muhammad Salleh bin Hamid

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing — Criminal review — Application for permission to make review application — Section 394H of the Criminal Procedure Code 2010 (2020 Rev Ed)]

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Introduction

1 The applicant, Mr Muhammad Salleh bin Hamid (the "Applicant"), is a prisoner currently awaiting capital punishment. His appeal against his conviction and sentence was dismissed by this court in 2020, and now, four years later, he seeks permission under s 394H(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") to review the said decision. Although this is his first time making such an application, the Applicant has been far from inactive since the dismissal of his appeal. In the interim, he has filed no less than six applications, raising various issues concerning his conviction and sentence.

2 Under s 394H(6A)(*a*) read with s 394J(2) of the CPC, the Applicant must satisfy this court that "there is sufficient material (being evidence or legal arguments)" to conclude that there has been "a miscarriage of justice in the

criminal matter in respect of which the earlier decision was made". After considering the Applicant's submissions, it is clear that there is no material whatsoever, let alone "sufficient material", for this court to conclude that there has been any miscarriage of justice.

3 As will be seen, one of the arguments mounted by the Applicant in aid of his application is that his counsel at the trial before the High Court was negligent and/or incompetent, and had acted contrary to his instructions. A similar allegation has also been mounted against his counsel at the appeal. I observe that there is a disturbing, ongoing trend of convicted persons blaming their counsel for their conviction, invariably without any proper basis and often contrary to the convicted person's original instructions (see, *eg*, *Mohd Noor bin Ismail v Public Prosecutor* [2023] SGCA 33 at [16]–[18]; *Arun Ramesh Kumar v Public Prosecutor* [2022] 1 SLR 1152 at [36]–[38]; *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 2 SLR 377 at [35] and [39]; *Murugesan a/l Arumugam v Public Prosecutor* [2021] SGCA 118 at [20]–[25]). Defence counsel provide an important public service in the administration of criminal justice. For this reason, this court has consistently emphasised that the threshold to raise such complaints is understandably strict – *ie*, that the counsel's conduct must fall so clearly below an objective standard that it could be fairly described as flagrant or egregious incompetence or indifference; and that there was a real possibility that the inadequate assistance caused a miscarriage of justice (see *Mohammad Farid bin Batra v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 907 ("*Farid*") at [135] and [138]–[139]).

4 In this regard, I reiterate the remarks of this court in *Thennarasu s/o Karupiah v Public Prosecutor* [2022] SGCA 4 at [15] that grave allegations against former counsel, which attack the reputation of counsel and the finality and integrity of the judicial process, should not be lightly made. Unfounded

allegations are reprehensible and unjust to counsel who have tried their best to assist clients in difficult situations, often without much material or other reward. It appears that this court's admonition against such unfounded and irresponsible allegations against former counsel has gone unheeded. Over a space of just three weeks, this court has already heard three such applications, including the present application, premised on allegations of negligence and incompetence against the former counsel of convicted persons – see *Masri bin Hussain* v *Public Prosecutor* [2025] SGCA 9 ("*Masri*") at [26]–[28] and CA/CM 44/2024 (filed in CA/CCA 3/2024 (*CEO v Public Prosecutor*) and also referred to in *Masri* at [27]). It should be stated in emphatic terms that an applicant who mounts such allegations must substantiate them with compelling evidence, and appellate courts – including this court – will not hesitate to make adverse costs orders against those who persist in making unsustainable and unfounded allegations against former counsel.

Facts and procedural background

Background facts

5 On 22 July 2015, one Mr Muhammad Abdul Hadi bin Haron ("Hadi") made a trip to Johor Bahru ("JB"). While in JB, Hadi collected two bundles from one "Kakak". It is undisputed that the Applicant had instructed Hadi to make this collection from Kakak, and that he had coordinated the same. After Hadi collected the two bundles, he hid them in his motorcycle and returned to Singapore on the same day. Later that day, both Hadi and the Applicant were arrested (see *Public Prosecutor v Muhammad Abdul Hadi bin Haron and another* [2020] 5 SLR 710 ("*Salleh (HC)*") at [6]–[7]).

6 The two bundles were recovered by the Central Narcotics Bureau ("CNB") from Hadi's motorcycle and were found to contain not less than 325.81g of methamphetamine (the "Drugs") (*Salleh (HC)* at [5]).

The trial and the trial judge's decision

7 The Applicant claimed trial to one charge under s 5(1)(*a*) read with ss 5(2) and 12 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The Applicant was accused of abetting Hadi by instigating him to be in possession of the Drugs for the purpose of trafficking. At the trial, the Applicant was represented by Mr Ragbir Singh s/o Ram Singh Bajwa ("Mr Singh") and Mr Wong Seow Pin ("Mr Wong").

8 The Applicant and Hadi were jointly tried in HC/CC 12/2018 ("CC 12"). At the end of the trial, the Judge of the High Court (the "Judge") convicted both the Applicant and Hadi, and the Applicant was sentenced to the mandatory death penalty. The Judge's grounds of decision are set out in *Salleh (HC)*.

9 The Prosecution's case against the Applicant in CC 12 was that he was prepared for Hadi to collect *any* amount of methamphetamine, including a quantity which exceeded the capital punishment threshold (*Salleh (HC)* at [27]).

10 The Applicant challenged the voluntariness of his contemporaneous statement and cautioned statement. In his contemporaneous statement, the Applicant admitted that he was involved in "drug related activities", and that he had acted as a "messenger", conveying instructions for the collection and delivery of drugs to Hadi. In his cautioned statement, the Applicant stated that he was unaware of the number of packages of drugs that were with Hadi (*Salleh (HC)* at [25]). After two ancillary hearings, the Judge found that the statements

had been voluntarily made and admitted them into evidence (*Salleh (HC)* at [8] and [24]).

11 The Applicant's sole defence at the trial was that he did not intend to traffic in more than 250g of methamphetamine (in gross weight, *ie*, the weight of the bundles). He claimed to have separately agreed with Kakak and Hadi not to deal in quantities of methamphetamine beyond the capital punishment threshold. To establish this defence, he relied on various text messages which purportedly showed his confusion after Kakak told him that Hadi had collected multiple bundles of drugs, when the Applicant had expected Hadi to collect only one bundle weighing not more than 250g (*Salleh (HC)* at [28]). The Applicant also submitted that in accordance with his alleged agreement with Hadi and Kakak, the two previous occasions on which Hadi had collected drugs from Kakak on the Applicant's instructions did not involve more than 250g of methamphetamine (*Salleh (HC)* at [29]).

12 The sole issue before the Judge related to the Applicant's state of mind regarding the quantity of drugs that Hadi was to collect from Kakak, at the point when the Applicant had instigated Hadi to collect the Drugs (*Salleh (HC)* at [34]). The Judge held that so long as the Applicant knew that Hadi would collect *any* number of bundles which Kakak gave to him, it would not matter if the Applicant had not known or addressed his mind to the specific number of bundles involved (*Salleh (HC)* at [32]).

13 Based on the evidence, the Judge was satisfied that the Applicant had no qualms about dealing in more than 250g of methamphetamine, and that a transaction involving two bundles with a total gross weight of 500g of methamphetamine was well within his contemplation when he instructed Hadi

to collect an unspecified quantity of methamphetamine from Kakak (*Salleh (HC)* at [50]). In making this finding, the Judge considered the following:

(a) Based on the text messages between the Applicant and Hadi, and the Applicant and Kakak, after Hadi had collected the Drugs on 22 July 2015, the Applicant had expressed no confusion or surprise when he was told that Hadi had collected two bundles of drugs totalling 500g. This showed that there was no agreement between him and Hadi or him and Kakak not to deal in more than 250g of methamphetamine (*Salleh (HC)* at [36]–[41] and [45]).

(b) The Applicant claimed that he had confronted Kakak over a phone call and asked her to take back one of the two bundles. However, this was a bare assertion which did not cohere with the text messages he had sent to Hadi after this alleged phone call (*Salleh (HC)* at [42]–[44]).

(c) The Applicant's contemporaneous statement and cautioned statement contradicted his defence at the trial. The defence was an afterthought which he deployed only because he had failed in his challenges to the admissibility of his contemporaneous and cautioned statements (*Salleh (HC)* at [46]–[47] and [50]).

(d) The Applicant's phone records – specifically, his text messages with Kakak – suggested that he had previously dealt with more than 250g of methamphetamine (*Salleh (HC)* at [49]).

14 For completeness, Hadi's defence was that he thought that the two bundles he had collected contained gold and cash (*Salleh (HC)* at [53]). The Judge rejected this defence. Hadi had failed to raise it in his earlier statements, and this account had internal inconsistencies. Moreover, Hadi had lied about his

acquaintance with the Applicant in an attempt to distance himself from the latter (*Salleh (HC)* at [56] and [61]–[63]).

15 On the appropriate sentence, a Certificate of Substantive Assistance was issued to the Applicant (*Salleh (HC)* at [80]). However, the Judge found that the Applicant's role went beyond that of a courier, since he was the one who had recruited and paid Hadi for the collection of the Drugs, and had performed an independent coordinating role between Hadi and Kakak. Thus, the Applicant did not qualify for the alternative sentencing regime under s 33B of the MDA, and was sentenced to the mandatory death penalty (*Salleh (HC)* at [77]–[80]).

The appeal and this court's decision

16 The Applicant appealed against his conviction and sentence in CA/CCA 37/2019 ("CCA 37"). The appeal was dismissed by this court in *Muhammad Abdul Hadi bin Haron v Public Prosecutor and another appeal* [2021] 1 SLR 537 ("*Salleh (CA)*"). The Applicant was represented by Mr Tito Shane Isaac ("Mr Isaac"), Ms Chong Yi Mei and Ms Lucella Lucias Jeraled for his appeal.

17 In relation to his conviction, the Applicant appealed primarily against the Judge's finding that he was prepared to deal in the quantity of drugs found in the bundles, and the Judge's consequent rejection of his defence (*ie*, that he did not intend to deal in more than 250g of methamphetamine) (*Salleh (CA)* at [24]). The Applicant's arguments on appeal and this court's rejections of the same are summarised as follows:

(a) First, the Applicant argued that the Judge erred in holding that the knowledge requirement was satisfied even if the Applicant did not know or had not addressed his mind to the specific number of bundles

involved. This court held that the Judge did not err, as her analysis simply recognised the culpability of an accused person who actively instructed his co-accused to collect an unspecified amount of drugs, thereby "necessarily accepting the possibility that this amount may exceed the threshold for capital punishment" (*Salleh (CA)* at [25]–[29]).

(b) Second, the Applicant argued that the inquiry into his state of mind had to be confined to the time of the Applicant's instigation of Hadi's offence, and that his text messages with Hadi or Kakak *after* the offence when he learnt about the actual quantity of the Drugs were less significant. However, this court held that the Judge was entitled to take those messages into account, as they formed the holistic context for the court to determine whether there was an agreement between the Applicant and Hadi not to deal in quantities of drugs exceeding the capital punishment threshold. Viewing the messages collectively, this court found that the Applicant was not troubled by the quantity of drugs that Hadi had collected, which buttressed the finding that the Applicant had instructed Hadi to collect whatever quantity of drugs that Kakak handed over to him (*Salleh (CA)* at [30]–[43]).

(c) Third, to prove his defence, the Applicant placed emphasis on messages which he had sent to Kakak the day before the offence. However, this court found that those messages did not support the Applicant's defence (*Salleh (CA)* at [42]–[45]).

(d) Fourth, the Applicant argued that there was a subsisting oral agreement between him, Kakak and Hadi to deal only in quantities of methamphetamine which fell below the capital punishment threshold. However, this court found that the messages between the Applicant and Hadi about a month before the offence showed that the Applicant had

no qualms for Hadi to be, on his instructions, in possession of *any* quantity of drugs, including amounts which were above the capital punishment threshold. Further, the messages relating to the Applicant's past conduct did not constitute inadmissible similar fact evidence, though they were not pivotal to the court's analysis (*Salleh (CA)* at [46]–[57]).

(e) In addition, this court found that the Applicant's contemporaneous statement clearly contained an admission that he was content to deal with the two bundles, and that he had instructed Hadi to collect them (*Salleh (CA)* at [58]–[59]). This court also agreed with the Judge that the Applicant's defence was "an afterthought bereft of any credible evidence", especially since it was only raised for the first time at the trial and was inconsistent with his cautioned statement (*Salleh (CA)* at [61]).

18 Notably, the Applicant did not challenge the Judge's decision that his contemporaneous and cautioned statements were admissible (*Salleh (CA)* at [6]).

19 In relation to his sentence, the Applicant challenged the Judge's finding that his role went beyond the ambit of a courier, arguing instead that it was limited to relaying messages as part of a "relay team". However, this court found that this was not borne out on the evidence. The Applicant's acts of recruiting and paying Hadi for delivering the Drugs went beyond the ambit of a mere courier, and hence, the courier exception did not apply (*Salleh (CA)* at [63]).

Post-appeal applications

20 As I observed above at [1], while the Applicant's present application is being made four years after this court's decision in *Salleh (CA)*, the Applicant has, in the interim, taken issue with various aspects of his conviction and sentence in the form of six post-appeal applications.

21 On 13 August 2021, the Applicant filed HC/OS 825/2021 ("OS 825") together with 16 other applicants. They sought declarations that the Attorney-General (the "AG") had acted arbitrarily against them and discriminated against them in breach of Arts 9(1) and 12(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) (the "1985 Constitution"). They also argued that the AG had exceeded his powers under Art 35(8) of the 1985 Constitution and/or the MDA. On 2 December 2021, OS 825 was dismissed in *Syed Suhail bin Syed Zin & Ors v Attorney-General* [2021] SGHC 274.

22 On 11 October 2021, the Applicant filed HC/OS 1025/2021 ("OS 1025") together with 16 other applicants, seeking leave to apply for an order of committal for contempt of court against the Minister for Home Affairs and Minister for Law. On 16 November 2021, OS 1025 was struck out on the application of the AG.

23 On 26 September 2023, the Applicant and 37 other applicants (two of whom were later removed) filed HC/OA 987/2023 ("OA 987"), seeking declarations that certain provisions introduced by way of s 2(*b*) of the Post-appeal Applications in Capital Cases Act 2022 (Act 41 of 2022) were inconsistent with Arts 9 and 12 of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "2020 Constitution"). On 5 December 2023, OA 987 was struck out in *Masoud Rahimi bin Mehrzad and others v Attorney-General*

[2024] 4 SLR 331. The appeal was dismissed on 27 March 2024 in *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 1 SLR 414.

24 On 28 March 2024, the Applicant and 35 other applicants filed HC/OA 306/2024 ("OA 306") seeking a declaration that the policy of the Legal Aid Scheme for Capital Offences Assignment Panel not to assign counsel for any post-appeal application was inconsistent with Art 9 of the 2020 Constitution. On 20 May 2024, OA 306 was struck out in *Iskandar bin Rahmat and others v Attorney-General* [2024] 5 SLR 1290. An appeal was filed in CA/CA 38/2024, and dismissed by this court on 9 September 2024.

25 On 29 April 2024, the Applicant filed CA/CM 19/2024 ("CM 19") seeking a stay of his execution on account of pending proceedings in OA 306. At the time, his death sentence was scheduled to be carried out on 3 May 2024. On 30 April 2024, this court summarily allowed CM 19, staying the execution of his death sentence pending the outcome of OA 306 or until further order.

26 On 19 September 2024, the Applicant and 30 other applicants filed HC/OA 972/2024 ("OA 972") seeking declarations that various provisions of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) were inconsistent with Arts 9 and 12 of the 2020 Constitution. OA 972 was struck out in its entirety on 5 February 2025 in *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2025] SGHC 20.

The parties' cases in this application

The Applicant's case

27 The Applicant seeks permission under s 394H(1) of the CPC to commence a review application against this court's decision in CCA 37. He relies on four broad grounds.

28 **Ground 1**: The Applicant submits that he was prejudiced in the presentation of his defence in two ways:

(a) His defence was starkly different from and in contradiction with Hadi's (who denied even knowing that the two bundles contained drugs) (see [14] above). As such, both of their defences could not be accepted by the court at a joint trial without unfairly prejudicing the Applicant's ability to prove his defence regarding the agreement to only traffic in quantities of drugs which fell below the capital punishment threshold.

(b) In a joint trial such as his where the accused persons' cases conflicted with one another, the Prosecution was required to present a unified case which Hadi and the Applicant could challenge objectively, as held in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*") at [82].

29 **Ground 2**: The Applicant argues that there is "fresh" evidence, or more accurately, evidence which he had raised to two sets of counsel (counsel for the trial (Mr Singh) and counsel for the appeal (Mr Isaac)) but which they failed to raise before the trial court and the appellate court. According to the Applicant, at the time of his arrest, he was only found to be in possession of S$3,800 (or more accurately S$3,812.65), with which he intended to pay for the Drugs (the "Money Evidence"). The Applicant alleges that, based on the market rate of

methamphetamine at the time, the sum of S$3,800 would have sufficed for the purchase of only 250g of methamphetamine, and not 500g. The Money Evidence therefore supports the Applicant's defence at the trial that he had only contemplated Hadi collecting 250g of methamphetamine from Kakak, and not 500g, and likewise, that it disproves the fact that the Applicant and Hadi had intended to deal in *all* the Drugs.

30 Moreover, the Applicant argues that the Money Evidence is important because the Prosecution should prove that he abetted Hadi by instigating Hadi to be in possession of the Drugs for the purpose of trafficking "by giving him enough cash or other means of payment to collect such quantities of drugs from Kakak".

31 **Ground 3**: The Applicant alleges negligence and/or incompetence on the part of Mr Singh during the trial for CC 12.

32 **Ground 4**: For completeness, the Applicant also advances other arguments challenging the Judge's findings in *Salleh (HC)*.

The Prosecution's case

33 The Prosecution contends that the present application, though couched as a review application under s 394H of the CPC, is nothing more than a "backdoor appeal against the decision in CCA 37", and an attempt at reopening that decision after all other avenues for recourse have been exhausted. The grounds raised do not constitute "sufficient material" disclosing any "miscarriage of justice". As the Applicant has not demonstrated any legitimate basis for the exercise of the court's power of review, the application should be summarily dismissed.

34 Additionally, the Prosecution relies on the responses of the Applicant's two former counsel to rebut the Applicant's claims of inadequate legal assistance and/or negligence on their part.

The applicable law

35 Under s 394H(1) of the CPC, an applicant must obtain permission from the appellate court before making a review application. In deciding whether to grant an application for permission, the appellate court must consider the matters stipulated under s 394H(6A) of the CPC, including whether the requirements under s 394J of the CPC have been fulfilled, and whether the intended review application has a reasonable prospect of success.

36 To this end, the applicant must show a "legitimate basis for the exercise of [the] court's power of review" (see *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 at [17]; *Tangaraju s/o Suppiah v Public Prosecutor* [2023] SGCA 13 at [14]). Under s 394J(2) of the CPC, a legitimate basis is established where an applicant proves that "there is sufficient material (being evidence or legal arguments)" for the appellate court to conclude that there has been "a miscarriage of justice in the criminal matter in respect of which the earlier decision was made". The elements of "sufficiency" and "miscarriage of justice" are a *composite* requirement (see *Rahmat bin Karimon v Public Prosecutor* [2021] 2 SLR 860 at [22]).

37 For the material to be "sufficient", the three requirements in ss 394J(3)(*a*) to 394J(3)(*c*) of the CPC must be fulfilled:

(a) that before the filing of the application for permission to make the review application, the material has not been canvassed at any stage

of the proceedings in the criminal matter in respect of which the earlier decision was made;

(b) that the material could not have been adduced in court earlier even with reasonable diligence; and

(c) that the material is compelling, in that it is reliable, substantial, powerfully probative, and capable of showing almost conclusively that there has been a miscarriage of justice in the said criminal matter.

38 The failure to satisfy *any* of the three requirements will result in a dismissal of the review application (see *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 1 SLR 159 ("*Syed Suhail*") at [18]).

39 Further, under s 394J(4) of the CPC, where the material which the applicant relies on consists of legal arguments, such material will only be "sufficient" if – in addition to the three requirements above – it is based on a change in the law *after* the conclusion of all the proceedings relating to the criminal matter in respect of which the earlier decision was made.

40 Finally, under s 394H(7) of the CPC, an application for permission to review may, without being set down for a hearing, be summarily dealt with by a written order of the appellate court. The relevant conditions to invoke this provision are set out in s 394H(8) read with s 394H(6A) of the CPC.

Ground 1: the Applicant's claim of prejudice is not "sufficient material" capable of demonstrating a "miscarriage of justice"

41 I deal first with the Applicant's argument that he suffered prejudice from being jointly tried with Hadi, due to the contradictions between their defences (see [28(a)] above). To crystallise his argument further, the Applicant submits

that he was prejudiced because when it was established that *Hadi* lied in his defence, the Applicant's own defence (*ie*, that he did not intend to traffic in quantities of methamphetamine which went beyond the capital punishment threshold) was also undermined. This is illustrated by how both the Judge and this court rejected his defence.

42 As the Prosecution submits, this submission falls foul of s 394J(3)(*b*) of the CPC as it does not constitute material that "could not have been adduced in court earlier even with reasonable diligence". The alleged prejudice of being tried together and/or the rejection of Hadi's defence was evident from as early as the trial in CC 12, and could have been raised by the Applicant then, or during his appeal in CCA 37. Having failed to do so, the Applicant cannot now seek to belatedly rely on this argument to challenge his conviction.

43 Even putting this objection aside, I find that the Applicant suffered no prejudice from being jointly tried with Hadi. The Judge had assessed the Applicant's defence on its own merits and without regard to Hadi's (failed) defence. The Judge's finding that the Applicant was prepared to deal in the quantity of drugs found in the bundles and not just quantities of methamphetamine which fell below the capital punishment threshold, as well as this court's affirmation of the same, was grounded on: (a) the text messages between the Applicant and Hadi, and the Applicant and Kakak on or around the day of the transaction; (b) the Applicant's contemporaneous and cautioned statements which the trial court admitted into evidence; and (c) text messages between the Applicant and Kakak in relation to previous transactions (see [13] above). Accordingly, I am not persuaded that Hadi's defence (and its rejection) had prejudiced the Applicant in any way, as it did not feature in the Judge's assessment of the Applicant's defence in the slightest.

44 To the extent that the Applicant is arguing that he should not have been jointly tried with Hadi because of their conflicting defences, the Applicant has demonstrated no principled basis for such a proposition. Section 146 of the CPC empowers the court to order that an accused, who is charged and tried at one trial with one or more co-accused, be charged and tried separately if it is of the view that he may be prejudiced or embarrassed in his defence. The Applicant has not demonstrated how this was the case in his joint trial. Instead, he merely emphasises time and again that Hadi's and his defences were inconsistent, contradictory and conflicting.

45 The Applicant also argues that the Prosecution had failed to present a unified case theory which Hadi and him could challenge objectively, a requirement identified by this court in *Ramesh* (see [28(b)] above). As a legal submission, this falls afoul of s 394J(4) of the CPC, as it is not based on a change in the law *after* the conclusion of all proceedings (*ie*, after the conclusion of CCA 37). The case of *Ramesh* was decided on 15 March 2019, well before the Applicant was convicted by the Judge on 19 August 2019 and sentenced to death on 27 September 2019. The Applicant's appeal in CCA 37 was dismissed on 23 November 2020, more than 18 months after the decision in *Ramesh*. While the Applicant claims that he only learnt of *Ramesh* on 18 June 2024 from his then counsel, Mr Ong Ying Ping, this is insufficient, especially since he was legally represented at both his trial and on appeal. To reiterate, the failure to satisfy *any* of the statutory requirements in ss 394J(3)(*a*) to 394J(3)(*c*) of the CPC will result in a dismissal of the review application (*Syed Suhail* at [18]). For this reason alone, the Applicant's submission cannot amount to "sufficient material".

46 In any event, the Applicant has not shown how the Prosecution failed to present a unified case theory. Apart from citing this requirement, the Applicant

has provided no explanation of what the conflicting case theories advanced by the Prosecution were, and how the Prosecution conducted its case contrary to this requirement. In contrast, I observe that the Prosecution's case was consistently that the Applicant had instigated Hadi to be in possession of the Drugs, which were meant to be collected from Kakak and delivered to a third party in Singapore. The Applicant knew that Hadi would be in possession of methamphetamine and was prepared for Hadi to collect *any* amount of the same (see [9] above).

47 Accordingly, the Applicant's argument about the alleged prejudice arising from being jointly tried with Hadi is hardly "sufficient material" capable of demonstrating a "miscarriage of justice".

Ground 2: the Applicant's reliance on the Money Evidence is not a legitimate basis to review CCA 37

48 As detailed at [29] above, the Applicant argues that his former counsel Mr Singh (at the trial) and Mr Isaac (at the appeal) had failed to raise the Money Evidence before the trial and appellate courts respectively. To recapitulate, the Applicant explains that based on the market rate of methamphetamine at the time, the sum of S$3,800 seized from him only sufficed for the purchase of 250g of methamphetamine, and not 500g. This supports the Applicant's defence that he had only contemplated Hadi collecting 250g of methamphetamine from Kakak, and not 500g.

49 In my view, there are no grounds to rely on the Money Evidence for the purposes of a review application.

50 First, the Money Evidence does not satisfy s 394J(3)(*b*) of the CPC, as it could have been adduced earlier, at any point during the proceedings. In this

regard, the Applicant alleges that Mr Singh "deliberately left out" the Money Evidence, even after the Applicant had brought the Money Evidence to Mr Singh's attention during a discussion. However, according to Mr Singh, such a conversation never took place. Instead, their discussions were "[a]t all times" focused on the interpretation of the WhatsApp messages between the Applicant and Hadi, and the Applicant and Kakak, in order to show the Applicant's purported surprise at the quantity of methamphetamine which Hadi had collected, and hence, that the Applicant did not wish to deal in more than 250g of methamphetamine (though this was ultimately rejected by the Judge and this court).

51 Mr Singh's account is consistent with the contemporaneous meeting notes which were recorded by Mr Wong and sent to Mr Singh, regarding the discussion between the Applicant and Mr Wong on how to proceed with the Applicant's case at the trial. Those notes do not indicate any discussion of the Money Evidence. To this end, the Applicant argues that "what was chosen by [Mr Singh] to be written in his notes is something beyond [the Applicant's] knowledge and control". That, however, misses the point: there is no reason – and the Applicant has not suggested one as well – for the notes to have excluded the Money Evidence or, more generally, the Applicant's instructions on what defence to run or evidence to raise.

52 Hence, I am satisfied that the failure to raise the Money Evidence was not due to any alleged negligence or incompetence by Mr Singh in failing to act on the Applicant's instructions. The Applicant could have raised the Money Evidence if he had exercised reasonable diligence and thought it sufficiently important.

53 In a similar vein, the Applicant claims that Mr Isaac had failed to adduce the Money Evidence despite the Applicant's instructions to do so. The Applicant's initial case was that Mr Isaac had agreed to pursue the Money Evidence as a ground in the appeal, and accordingly, included it in the Petition of Appeal ("POA") at para 3(b)(x). However, the Applicant claimed that Mr Isaac had subsequently requested for the point to be taken out in a letter to the Prosecution, without obtaining the Applicant's prior consent. The Applicant claimed that he would not have consented to such a removal, as it was "crucial evidence to [his] case". In response, Mr Isaac deposed that the Applicant had discussed with him and agreed for the Money Evidence to be removed from the POA. Crucially, this is supported by a letter *from the Applicant himself* pointing out that the Money Evidence was erroneously included in the POA:

> Dear Mr Tito,
>
> …
>
> And I noticed you added paragraph B(x) into the Petition *contrary to what had been discussed & agreed.* Anyway, see you guys soon for submission.
>
> …
>
> [emphasis added]

54 The Applicant was granted leave to file a reply to respond to the above. In his reply, the Applicant shifted his case and now claims that, although he had wanted to include the Money Evidence in the main appeal, Mr Issac had convinced him to proceed with the appeal first and to only file a criminal motion to adduce the Money Evidence *after* the appeal. In other words, the Applicant's new position is that he and Mr Isaac had agreed *not* to include the Money Evidence in the appeal, but to pursue it later. In order to account for his letter exhibited above, the Applicant explains that he was surprised when he saw that the POA included the Money Evidence, and thought that Mr Isaac had

ultimately included the Money Evidence because he had realised its significance. The Applicant thus submits that his letter was taken out of context by Mr Isaac and that it does not show that the Applicant had agreed not to rely on the Money Evidence in the appeal in CCA 37.

55 I reject the Applicant's attempt to explain away his instruction to remove the Money Evidence from the POA in his own letter and find it to be a convenient prevarication. Given the gravity of the Applicant's original allegation (*ie*, that Mr Isaac had unilaterally removed the Money Evidence from the POA without his consent even though it was agreed that it was to be pursued at the appeal), for the Applicant to now shift his position on such a material point is highly significant. It is evident that the Applicant only advanced his new position in order to address the contents of the letter – which were undoubtedly adverse to his original claim – after Mr Isaac had brought the same to the attention of the court. In any event, all the Applicant has provided is an evolving allegation, and there is a complete absence of objective evidence as to his alleged instructions to include the Money Evidence for the purposes of the appeal in CCA 37.

56 Having rejected the Applicant's explanation, it is clear that the decision not to raise the Money Evidence before the appellate court was a *deliberate* and *considered* choice by the Applicant, and not a unilateral decision made by Mr Isaac. Accordingly, the Applicant has no grounds to claim that Mr Isaac had failed to abide by his instructions.

57 Section 394J(3)(*b*) of the CPC is thus not made out, as there was ample opportunity for the Applicant to raise the Money Evidence; he had simply made the deliberate decision not to do so. I also reiterate my remarks at [3]–[4] above, that such baseless accusations made by an accused person against his former

counsel, who had been doing their level best for the accused person, are reprehensible and unacceptable.

58 Second, the Money Evidence is also not "compelling" under s 394J(3)(*c*) of the CPC. The Applicant initially claimed that the sum of S$3,800 seized from him was supposed to cover certain personal expenses, and not to purchase the Drugs. In his "long" statement, he explained that:

> 10. (Recorder's note: 1 photo of S$3812.65, 5 million Ruppiah and RM 1 was shown to the accused) The money shown to me in the photo all belongs to me. I have so much cash on me because they are for my work purpose. Eg. Payment to embassy and crew salary, legalisation fees. As I am running my business alone for now, I will need the cash on me to settle a lot of stuff.

59 As pointed out by the Prosecution, there is nothing in this statement which indicates that the sum of S$3,800 was for the purposes of purchasing only 250g of methamphetamine (taking the Applicant's case at its highest) from Kakak. In any event, even if the Applicant was indeed purchasing the Drugs from Kakak, the fact that only S$3,800 was seized from him does not conclusively mean that he could not afford a larger quantity of Drugs beyond the capital punishment threshold. He could have had funds stored elsewhere, or a subsisting arrangement with Kakak for the shortfall in payment to be accounted for through other means. Further, it was neither the Prosecution's case nor the Applicant's case that the Applicant was *purchasing* the Drugs from Kakak (see [60]–[61] below). Consequently, the Money Evidence is not so "reliable, substantial, powerfully probative, and capable of showing almost conclusively that there has been a miscarriage of justice" under s 394J(3)(*c*) of the CPC that a review of this court's decision in CCA 37 should be permitted.

60 Additionally, the Applicant suggests that the Prosecution bears the burden of proving that he abetted Hadi by instigating him to be in possession of

the Drugs for the purpose of trafficking "by giving him enough cash or other means of payment to collect such quantities of drugs from Kakak". This submission is a non-starter. It was not the Prosecution's case that the Applicant and/or Hadi were *purchasing* the Drugs from Kakak such that there had to be a payment. Instead, the Prosecution maintained all along that Hadi was only required to *collect* the Drugs, on the instructions of the Applicant. This can be seen from the Judge's summary of the Prosecution's case in *Salleh (HC)* at [26]–[27], as well as this court's analysis in *Salleh (CA)* at [32]–[41] on whether the WhatsApp messages between the Applicant, Hadi and Kakak showed surprise by the Applicant on Hadi's *collection* of the Drugs. There is thus no requirement for the Prosecution to prove that the Applicant had provided any money to Hadi to facilitate the collection.

61 In fact, the Applicant accepts this in his submissions, stating (in the context of his explanation concerning his knowledge of the transaction) that "the ownership of [the Drugs] belongs to Kakak" and that he had "no control over the transaction in Johor between Kakak and Hadi *simply because [he] bridge communication mainly for Kakak*" [emphasis added]. This shows that his case, even in the present application, is not that he or Hadi sought to purchase the Drugs from Kakak. As such, the Money Evidence offers no relevance whatsoever to his defence.

Ground 3: the Applicant's allegations against Mr Singh are not made out

62 Apart from his allegations against Mr Singh and Mr Isaac regarding the Money Evidence, the Applicant also claims that he suffered serious injustice due to Mr Singh's negligence and/or incompetence in CC 12. As held by this court in *Farid*, in assessing if there was inadequate legal assistance as a ground

for challenging a conviction, the threshold is a high one, and it must be proven that (at [134]–[139]):

(a) first, the trial counsel's conduct of the case fell so clearly below an objective standard that it could be fairly described as flagrant or egregious incompetence or indifference; and

(b) second, there was a real possibility that the inadequate assistance caused a miscarriage of justice.

63 In this case, the Applicant argues that Mr Singh provided inadequate legal assistance because:

(a) Despite the Applicant's expressed intention to make a new statement to the CNB to disclose the "truth", Mr Singh failed to make arrangements for this and "nothing came through".

(b) Mr Singh had not been "earnest and professional in performing his duty" owing to his failure to call witnesses, including one Dr Stephen Phang, and to address issues that were unclear during re-examination. Dr Stephen Phang had examined the Applicant post-arrest on three occasions for the purposes of conducting a psychiatric assessment.

(c) Mr Singh had unilaterally decided that the Applicant should run a defence establishing himself as a courier rather than one where the Applicant was a trafficker, albeit for a quantity of drugs below the capital punishment threshold. According to the Applicant, he did not instruct Mr Singh to advance this defence after the Applicant's challenged statements were admitted. Instead, this was Mr Singh's decision and "it was not a discussion but instead telling [the Applicant] what to do". Moreover, he claims that it was Mr Singh's decision to

intentionally exclude the Money Evidence, so as to not contradict his courier defence.

64 Applying the principles in *Farid*, none of the Applicant's allegations pass muster. With respect to the first allegation, there is no corroborative evidence that the Applicant made a request to provide a new statement to the CNB *before* his trial, as he now alleges. Since the Applicant claims that his mother and his sister had convinced him to make a new statement to the CNB, both of them would presumably be in a position to confirm the alleged events. Yet there is nothing from them, nor, at the very least, any *attempt* by the Applicant to show that they are able to support his claim. Nor is there any correspondence to Mr Singh or contemporaneous meeting notes setting out the Applicant's request. All that is before the court is the Applicant's say so.

65 In any event, even if I accept that the Applicant had requested for such a further interview, it is uncertain what the Applicant had wanted to disclose about the "truth" beyond what he had already stated. If the Applicant had simply wished to confess that he lied in his long statement, which his submissions in the present application seem to suggest, his confession is unlikely to affect his conviction or sentence in any material way, let alone act as "reliable, substantial, powerfully probative" evidence which may "conclusively" show a miscarriage of justice. As noted at [13] above, the Appellant's conviction by the Judge (which was upheld on appeal) was premised substantially on the text messages exchanged between him and Kakak, and him and Hadi, and had little to no connection to the lies he had told in his long statement. The Judge found that the Applicant had expressed no surprise in his text messages when he was told that the drugs collected were not of a quantity which fell below the capital punishment threshold. This was inconsistent with the Applicant's defence that there was an agreement to only traffic in quantities of methamphetamine which

fell below the capital punishment threshold. Hence, even if the Applicant had been given the opportunity to confess in a further statement prior to the trial that his long statement was inaccurate and, in its place, set out his defence to be advanced, the same inconsistencies between the contents of any further statement and his defence on the one hand and the contemporaneous, objective text messages on the other hand would have remained. In other words, the evidential basis for the Applicant's conviction would still stand and be unaffected by this allegation mounted against Mr Singh. In sum, even if the Applicant had wanted to confess that he lied in his long statement, this would not constitute "sufficient material" to show a miscarriage of justice.

66 With respect to the second allegation regarding the failure to call Dr Stephen Phang, it is well-established that decisions to call specific witnesses or those concerning the scope of examination of witnesses are within the purview of counsel. As this court held in *Farid* (at [135]):

> 135 An appellant seeking to overturn his conviction on the basis that he did not receive adequate legal assistance must show that the trial counsel's conduct of the case fell so clearly below an objective standard of what a reasonable counsel would have done or would not have done in the particular circumstances of the case that the conduct could be fairly described as flagrant or egregious incompetence or indifference. In other words, the incompetence must be stark and glaring. Certainly, *it will not be enough to show that some other counsel, especially eminent or experienced ones, would have taken a different approach or perhaps would have been more combative towards the Prosecution's witnesses. As long as counsel, whether at trial or on appeal, are acting in accordance with their clients' instructions and in compliance with their duty to the court and their professional obligations, they must be given the deference and the latitude in deciding how to conduct the case after studying all the evidence and the applicable law. Legitimate and reasonable strategic or tactical decisions do not come within the very narrow class of cases where inadequate assistance of counsel can be said to have occurred.* [emphasis added]

67 The decisions which the Applicant now seeks to impugn were reasonable and/or strategic decisions within the purview of Mr Singh. As the Applicant has not demonstrated how the failure to call Dr Stephen Phang shows "flagrant or egregious incompetence or indifference" on Mr Singh's part, due deference should be given to Mr Singh's strategic decisions during the trial.

68 With respect to the third allegation that Mr Singh had unilaterally decided that the Applicant should run a defence which established the Applicant as a courier, there is no evidence beyond the Applicant's assertion that he had instructed Mr Singh to run a different defence at the trial. In any event, it was open to the Applicant to raise a different defence and/or the Money Evidence himself when giving his testimony in court. Yet, he did not do so despite its apparent significance, which on his case, he had appreciated and tried to (unsuccessfully) impress upon Mr Singh.

69 It is apposite to rehearse the caution against future applicants (and their counsel) that the court takes an extremely dim view of such ill-founded and spurious allegations against former counsel, wielded opportunistically to raise doubts about the propriety of the applicant's conviction and/or sentence. Similar to this court's finding in *Masri* at [27], I find these allegations to be a grave disservice to the Applicant's former counsel and an obstruction to the finality of the judicial process. The fact that the Applicant is acting in person, without representation, is not an excuse and should not be taken as a licence to advance such untenable allegations.

Ground 4: the Applicant's other arguments do not disclose any new material

70 Finally, in his written submissions, the Applicant makes various arguments in an effort to advance his defence that he had not intended to traffic

in more than 250g of methamphetamine, and concurrently, to undermine and challenge the Judge's findings. Much of these comprise of his recollection of the process of recording his contemporaneous statement, suggesting that he had been threatened or intimidated.

71 None of these arguments are new material which "[have] not been canvassed at any stage of the proceedings" under s 394J(3)(*a*) of the CPC. The bulk of these arguments were considered and rejected by the Judge in CC 12 as well as this court in CCA 37. In so far as any of these arguments may not have featured previously, there was nothing stopping the Applicant from raising them at the trial or on appeal had he exercised reasonable diligence. Hence, s 394J(3)(*b*) of the CPC is also not satisfied. Moreover, I highlight that the Judge had found the Applicant's contemporaneous and cautioned statements to be admissible, a finding which the Applicant did not challenge on appeal (see [10] and [18] above).

72 More importantly, as this court highlighted in *Siva Raman v Public Prosecutor* [2024] SGCA 34, a review application is not a forum to re-litigate issues which have already been considered (at [44]–[45]). Mere attempts to recharacterise the available evidence, or to mount fresh factual arguments on the basis of such evidence, do not assist an applicant's case, and are insufficient to satisfy the requirements under s 394J(3) of the CPC.

Conclusion

73 For the reasons above, the present application does not disclose a legitimate basis for this court to exercise its power of review. Permission is not granted to the Applicant to commence a review of this court's decision in CCA 37. Moreover, as can be seen from my analysis above, the present application is devoid of merit, with no prospect of success. It was also

injudicious for the Applicant to have advanced his misguided allegations against his former counsel. Consequently, I find it appropriate for the application to be dismissed summarily without being set down for a hearing pursuant to s 394H(7) of the CPC.

Steven Chong JCA
Justice of the Court of Appeal

The applicant in person;
Rimplejit Kaur and Mark Chia Zi Han (Attorney-General's Chambers) for the respondent.
