

HONG KONG / JUDGMENT

HKSAR v. MIZANUR RAHMAN

[2026] HKCA 94**COURT**

Court of Appeal

DECIDED

28 January 2026

CASE / FILE NUMBER

CACC235/2024

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CACC 235/2024 [2026] HKCA 94 On appeal from [2024] HKDC 1764 and [2024] HKDC 1800 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO 235 OF 2024 (ON APPEAL FROM DCCC NO 379 OF 2023)

BETWEEN HKSAR Respondent and Mizanur Rahman Applicant

Before: Hon Zervos JA in Court Date of Hearing: 22 January 2026 Date of Judgment: 22 January 2026 Date of Reasons for Judgment: 28 January 2026

REASONS FOR JUDGMENT

On 18 October 2024, the applicant was found guilty after trial of three charges of trafficking in a dangerous drug before District Court Judge Wong Sze Lai, Lily (the judge). The facts of the case, as found by the judge, were relatively straightforward. As part of a covert decoy operation, the police observed the applicant selling cocaine. He sold cocaine to a police officer posing as a customer on both 26 November and 16 December 2022. Upon his arrest, the police recovered seven packets of cocaine that he had stashed away at a nearby location. On 25 October 2024, the judge sentenced the applicant to a total of 44 months' imprisonment. On 8 November 2024, the applicant filed a notice of application for leave to appeal against his conviction and sentence. At the conclusion of the hearing, I refused the applicant leave to appeal against both conviction and sentence. I also refused his application for bail pending appeal. These are my reasons for the judgment. On 23 April 2025, the applicant applied for bail pending appeal, which was refused on 28 April 2025 with reasons provided. He had filed a letter on 15 April 2025 listing 48 grounds of appeal against conviction and a written submission at the hearing on 28 April 2025, primarily challenging the evidence and credibility of the police officers, whose evidence the judge had

accepted. One of the applicant's grounds of appeal against conviction complained that he did not give evidence at his trial because of advice provided by his lawyer. The application was refused on the basis that these complaints lacked substance. On 27 June 2025, the applicant filed a further application for bail pending appeal, which was again refused on 3 July 2025 with reasons provided. The only change in the circumstances was that the applicant alleged flagrant incompetence on the part of his trial legal representatives. He had filed: an affirmation on 12 May 2025 listing thirteen complaints regarding his defence team; a written submission on 15 May 2025 claiming unawareness of the case to answer procedure; an affirmation on 30 May 2025 waiving legal professional privilege; and an affirmation on 27 June 2025 setting out his bail application together with five additional complaints about his trial. The applicant's allegations of flagrant incompetence included claims that his defence team refused to adduce evidence or bring relevant matters to the judge's attention contrary to his instructions; that defence counsel asked inappropriate questions, failed to explain the concept of a case to answer, and provided incorrect advice regarding his right to testify at trial; and that the prosecution and defence teams deliberately prolonged the case to force him to leave Hong Kong so that he would not receive compensation in his High Court claim (HCCC 25/2020). He was a defendant in the High Court case, charged with trafficking in a dangerous drug, but was acquitted after trial. He further claimed that the police, acting out of revenge, had set him up in the present case. As noted in the bail decisions, he was unable to provide details of the police officers he claimed were involved, and this issue was not raised during the present trial. At one stage, he went so far as to allege collusion between the prosecution and defence teams to secure his conviction. He also raised several complaints about the trial and appeal procedures, but these were minor and inconsequential, such as his case being adjourned after he was convicted and not being provided with a full transcript of his trial (although he was given a recording of the entire trial). In rejecting the applicant's second application for bail pending appeal, the Court reminded him of its power to order loss of time, particularly in cases where unfounded allegations are made against legal representatives at trial. There were 48 grounds of appeal against conviction and one ground against sentence. Grounds 1 to 39 alleged fabrication of prosecution evidence. Grounds 40 to 43, together with Grounds 45 to 48, alleged procedural impropriety by the police in conducting the house search and recording the video interview. Ground 44 alleged flagrant incompetency on the part of the applicant's legal representatives, specifically relating to the handling of his right to give evidence in court. Ground 49 contended that the sentence imposed was excessive. In my view, there was no merit in the complaints raised by the applicant. They concerned factual issues and allegations of impropriety, most of which were addressed at trial and in the judge's reasons for verdict, including: (i) the location of the applicant and PW1 regarding the transaction on 16 December 2022; (ii) whether there was sufficient lighting for the police officers to observe the various transactions; (iii) the location of the search and finding of the marked money; (iv) the presence of PW3 at the applicant's house search; (v) the absence of the applicant during the house search; (vi) inconsistencies in the evidence of PW1, PW3 and PW4; (vii) PW1 wrongly recorded the sum paid to the applicant; (viii) the time taken for the 26 November 2022 transaction; (ix) inconsistent descriptions of the applicant by PW1 and PW3; (x) PW1's identification of the applicant on 26 November 2022; (xi) the applicant's assertion that a

black man who sold drugs to PW1 on 25 November 2022 had his charge dismissed; (xii) the applicant not being present during the search of the alcove; and (xiii) the applicant's allegations that the police threatened him and told him to remain silent. None of the applicant's complaints had any substance, all of which had been comprehensively addressed by Ms Florrie Chan, for the respondent, in her written submission, and were shown to be without merit. The applicant's complaints against his legal representatives were serious in nature, but entirely unfounded. He alleged that: (i) His legal representatives refused his request to play the video recording of his interview, stating that the police had not provided a disc. However, as he exercised his right of silence, producing the video recorded interview would have had no effect on the fairness or outcome of his trial. (ii) Defence counsel did not cross-examine the police officers about their failure to take DNA and fingerprint samples from him. However, as deposed by his legal representatives, no such instructions were given. In any event, defence counsel made the point in his closing address that there was a lack of DNA or fingerprint evidence showing that the applicant had no contact with the dangerous drugs and the banknotes seized. (iii) His legal representatives refused to adduce evidence regarding the High Court case, which he claimed was linked to a "set up" by the same officers as revenge for the acquittal. However, enquiries by his solicitor found no such connection; the arresting officers had no involvement in his High Court case. (iv) His legal representatives never informed him of the consequences of not testifying at his trial. However, they deposed that he was given full and proper advice concerning his decision, and a written record was made confirming the advice provided at a meeting on 5 October 2023. (v) He was not aware that the court had ruled there was a case to answer. This ruling was, however, the subject of written submissions and was announced in open court. (vi) Defence counsel did not refer to the "fabricated evidence" of prosecution witnesses in his closing address. In fact, counsel challenged the credibility of the prosecution witnesses. (vii) The police subdued potential defence witnesses, but his legal representatives did not inform the court. According to his written instructions to his lawyers, the potential witnesses did not see or hear the relevant events. He claimed there were witnesses, but they could not be located, and at no time were his legal representatives informed that witnesses failed to respond due to duress, as claimed. (viii) The police approached him during one of the mention hearings, but no complaint was made to his legal representatives. (ix) There was gross misconduct by his counsel in enquiring whether he would be sentenced on the day of verdict. The applicant's legal representatives at trial submitted affirmations addressing the allegations made against them. As already noted, the applicant was represented by experienced counsel who, after examining the case papers, represented him ably throughout the proceedings. Trial counsel has a wide discretion in conducting a criminal trial, and there was nothing to suggest that the applicant received anything less than a fair trial. In my view, the applicant's complaints against his legal team were unfounded, as they were based on misconceptions and misrepresentations. During the hearing, the applicant complained that he had been prevented from filing further grounds of appeal because of a direction from the court. In fact, he had been instructed to file his grounds of appeal properly; he had previously raised issues in a staggered manner, not in accordance with the procedural requirements. Even at the hearing, he raised a new ground, which was without merit. He referred to the prosecuting counsel's closing address, in which it was noted that the

defence criticised the police operation as “fanciful”, and complained that this showed the prosecution had knowledge of the defence closing address before it was made. He also complained that his written instructions to his lawyers should have been produced as evidence, but they failed to adduce them. He again referred to the fact that he did not give evidence, blaming his lawyers for the decision, and cited *Chong Ching Yuen v HKSAR*, where reference was made to a case in which defence counsel failed to advise his clients that a conviction was a virtual certainty unless they testified. This, however, did not assist the applicant in the circumstances of his own case. For the foregoing reasons, leave to appeal against conviction was refused. The leave application against sentence The applicant’s complaint against his sentence was entirely without justification. He was actively selling drugs on the street, ensuring that only the required quantity was in his possession during each transaction. The remainder of his cache of drugs was strategically hidden nearby to avoid detection if apprehended by the authorities. In her reasons for sentence, the judge identified the relevant sentencing principles and applied them correctly. She adopted a starting point of 24 months’ imprisonment for Charges 1 and 2, and 35 months’ imprisonment for Charge 3, and enhanced each starting point by 6 months’ imprisonment for the applicant’s status as a Form 8 recognizance holder, arriving at 30 months’ imprisonment for Charges 1 and 2, and 41 months’ imprisonment for Charge 3. Applying the totality principle, she ordered the sentences for Charges 2 and 3 to run wholly concurrently, and 3 months of the sentence for Charge 1 to run consecutively to the sentence of 41 months’ imprisonment for Charges 2 and 3, resulting in an overall term of 44 months’ imprisonment. Leave to appeal against sentence was refused. Loss of time The applicant had made extreme and unfounded allegations of incompetence against his legal representatives at trial. These allegations only emerged as grounds of appeal after an application for bail pending appeal was refused and his numerous other grounds were found to lack merit. The applicant’s complaints could be generally described as matters previously raised and properly dealt with by the judge in her reasons for verdict, or as new matters that lack credibility. Before this hearing, the applicant had made two applications for bail pending appeal. On both occasions, the Court issued written decisions explaining that his grounds of appeal lacked merit, and on the second occasion, he was warned of the Court’s power to make a loss of time order, particularly in the face of unfounded allegations against his legal representatives. During the hearing, it became apparent that the applicant may have mental health issues. He was highly agitated and irrational, and this was reflected in the presentation and content of his submissions. I would have made a loss of time order, but I decided not to do so, given the possibility that he has a mental health problem. I recommend that the Correctional Services Department be provided with a copy of this judgment and that appropriate arrangements be made to provide psychological or welfare support to the applicant. Warning of loss of time Notwithstanding my observations about the applicant’s mental health, I reminded him of his right to renew his application for leave to the Court of Appeal. However, I emphasised, as on previous occasions, that renewing his applications may result in the Court ordering a loss of time for any period spent in custody pending appeal, should it find his applications unjustified. I had no doubt that he understood the nature and consequences of a loss of time order, if he pursues his unmeritorious grounds and complains. Bail pending appeal I also considered the applicant’s separate application for bail pending appeal, which I refused.

(Kevin Zervos) Justice of Appeal Ms Florrie Chan, ADPP, of Department of Justice, for the respondent The applicant appeared in person

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