

HONG KONG / JUDGMENT

HKSAR v. PRABHEEP SINGH AND ANOTHER

[2026] HKCFI 1112

COURT

Court of First Instance

DECIDED

16 February 2026

CASE / FILE NUMBER

HCCP72/2026

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HCCP 72/2026

[2026] HKCFI 1112 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MISCELLANEOUS PROCEEDINGS (CRIMINAL) NO 72 OF 2026 IN THE MATTER of an application for a certificate pursuant to section 32(2) of the Hong Kong Court of Final Appeal Ordinance, Cap 484 and IN THE MATTER of the decision of Recorder Derek Chan SC of the 28th day of January 2026 in High Court Miscellaneous Proceedings No. 72 of 2026 BETWEEN HKSAR Respondent and Prabheep SINGH 1st Applicant SOURABH 2nd Applicant Before: Recorder Derek Chan SC in Chambers (Open to Public) Date of Hearing: 16 February 2026 Date of Decision: 16 February 2026 DECISION The Applicants are jointly charged with another co-defendant with one count of Robbery, contrary to s.10 of the Theft Ordinance (Cap 210). The Applicants applied to this Court for review of refusal of bail pursuant to s.9J of the Criminal Procedure Ordinance (Cap 221) (“CPO”). Given the overall circumstances of the case as presented to me, that both Applicants had demonstrated strong local ties, and that both the Applicants’ respective wives were willing to be sureties, I was satisfied that it was appropriate to grant bail to both Applicants with stringent bail terms imposed. Both Applicants then applied orally through counsel for costs of their applications pursuant to s.9J(2) of the CPO, citing only the judgment in HKSAR v Su Wei [2012] 1 HKC 284 in support. Given that the circumstances underlying the granting of costs in Su Wei were extremely different from the circumstances of the present case, the applications for costs were refused (“the Costs Decision”). By way of a Notice of Motion dated 28 January 2026, the Applicants seek a certificate pursuant to s.32(2) of the Court of Final Appeal Ordinance (Cap 484) (“the CFAO”) that the following points of law of great and general importance are involved in the Costs Decision: “In the context of a successful application to a judge or deputy judge of the Court of First Instance to be admitted to bail pursuant to section 9J of the [CPO] and upon a consequential application by the applicant for costs: Is the court

obliged to give reasons for refusing costs? Is there a general rule that a successful applicant for bail should receive his reasonable costs (subject to just reasons to deny costs)?” The first question simply does not arise for consideration in the circumstances of the present case because a short reason was given for the Costs Decision. The Applicants’ real complaint lies in the adequacy of the reason given. I therefore refuse to certify the first question. In respect of the second question, s.9J(2) of the CPO undoubtedly provides the Court with a power to award costs “as he think just”. I accept the submission from the Respondent that this provision confers a discretion “to be exercised in light of all the circumstances of the case”. Section 9J applications commonly (but not exclusively) involve defendants accused of crimes of varying degrees of seriousness, awaiting trial with their guilt yet to be determined by the trial court. As stated by Lee J in *HKSAR v Wong Chi Fung* [2020] 2 HKLRD 56 [2020] HKCFI 392 at paragraph 20, a judge sitting on a bail review is not exercising an appellate jurisdiction, but is obliged to review the matter afresh. A success of a bail review does not necessarily imply any error or mistake on the part of the court below. The considerations that underlie decisions to grant bail are necessarily case specific, with great variance in the facts and circumstances across different cases. I do not see how there could be a “general rule” that a successful applicant for bail “should receive his reasonable costs”, even if such a “general rule” is to be qualified in some broad and unspecified way by adding in “subject to just reasons to deny costs”. I do not consider the second question as framed to be reasonably arguable and I therefore refuse to certify the second question. For the reasons explained above, the Applications for certification under s.32(2) of the CFAO are dismissed. (Derek Chan SC) Recorder of the Court of First Instance Mr Lucas Lai PP, of the Department of Justice, for the Respondent Mr Azan Marwah, instructed by Mohnani & Associates, for the 1st Applicant Mr Nicklaus Pannu-Yuon, instructed by Mohnani & Associates, for the 2nd Applicant

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Prepared on 29 October 2026 · Esheria