

Case Summary

HKSAR v Ho Kwai Lam (何桂藍)

HCCP 447/2021; [2021] HKCFI 2707
(Court of First Instance)

(Full text of the Court’s reasons for decision in English at
https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=138496&currpage=T)

Before: Hon Toh J

Date of Hearing: 8 September 2021

Date of Reasons for Decision: 9 September 2021

Restriction on reports of bail proceedings under s. 9P of Criminal Procedure Ordinance (Cap. 221) – duty to protect the integrity of court proceedings down the line – bail proceedings not conducted in closed court – application for lifting reporting restrictions refused

Background

1. At the hearing for her bail application, the Applicant requested the Court to lift the restriction on reports of bail proceedings under s. 9P of the Criminal Procedure Ordinance (Cap. 221).

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

- Criminal Procedure Ordinance (Cap. 221) (“CPO”), s. 9P

2. The Court considered whether the reporting restrictions should be lifted for the Applicant’s bail application.*

* Editor’s Note: Section 9P(1) of the CPO provides: “Unless it appears to the court that the interests of public justice otherwise require, no person shall publish in Hong Kong a written report, or broadcast in Hong Kong a report, of any bail proceedings containing any matter other than that permitted under subsection (2).”. Examples of matters permitted under s. 9P(2) are the name of the accused, the

Summary of the Court's rulings

3. Counsel for the Applicant submitted that the reporting restrictions should be lifted for her bail application in the interests of “public justice” or “open justice” for the following reasons:

- (a) the public had a right to know what had been said in the bail application and the view taken by the court as to bail applications for offences under the NSL;
- (b) the Applicant did not see any prejudice to her in the lifting of the restrictions. (para.1)

4. The Court held that it had a duty to protect the integrity of court proceedings down the line. For example, should the Applicant wish to instruct a new counsel to represent her in the future, the new counsel should not be hampered in his representation of the Applicant by what was said by her counsel in the present bail application. (para 2)

5. The Court also found that the assertion of counsel for the Applicant that the bail application would effectively be determined under closed door was inaccurate when the bail proceedings were in fact conducted in open court with the public gallery opened to the public and broadcasting facilities outside the courtroom. It reminded that counsel should be more circumspect in making unfounded assertions in court. (para. 3)

6. In conclusion, the Court was not persuaded that there were good reasons to lift the reporting restrictions and refused the application for lifting the restrictions accordingly, whereupon the Applicant withdrew her bail application. (paras. 4-5)

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