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Death row inmate acquitted of attempted heroin trafficking



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'Reasonable doubt' over charge, but top court calls for alternative charge to be considered



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The top court acquitted a death row inmate of attempted trafficking in heroin but called for an alternative charge to be considered by the prosecution based on the evidence.

The court, in judgment grounds last week, underlined the "unusual circumstances" of his arrest that raised doubts as to a possible mix-up over the ketamine and Ice bundle he claimed to have ordered instead of the heroin bundle he was set to receive from a courier nabbed earlier by Central Narcotics Bureau (CNB) officers.

"We adjourn the matter pending submissions from the prosecution on whether, in the light of (our) observations, we should amend the charge to one of attempting to possess 100g of ketamine and 25g of Ice for the purpose of trafficking," wrote Chief Justice Sundaresh Menon on the court's behalf, which included Judges of Appeal Andrew Phang and Steven Chong.

Han Fang Guan, 59, had been convicted in the High Court in 2018 of a capital offence of attempting to possess not less than 18.62g of heroin for the purpose of trafficking.

His conviction in the High Court is believed to be the first case of an accused person convicted and sentenced to death for attempted drug trafficking.

He appealed and the top court, after hearing the case last year, called for further submissions from both defence lawyers led by Mr Low Cheong Yeow and the prosecution team helmed by Deputy Public Prosecutor Lau Wing Yum.

At issue was a matter of law, given that at the time he was arrested, the authorities knew that it would not have been possible for him to fulfil the commission of the crime, as "neither the drugs nor the courier were present at the scene of the putative crime".

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In March 2016, the courier, Khor Chong Seng, had collected several bundles from Malaysian supplier Lao Ban but was later nabbed at the Woodlands Checkpoint.

CNB officers found three bundles of diamorphine, or heroin, one small bundle of methamphetamine, or Ice, and three bundles containing nimetazepam tablets.

Khor confessed he was to deliver the drugs to recipients in Singapore, and cooperated with CNB officers in a follow-up operation against the intended recipients.

Following several phone calls, Han and Khor arranged to meet in Toa Payoh where a CNB officer assumed the place of Khor and travelled to the designated meeting place in a taxi. After the CNB officer confirmed Han's identity from within the taxi, Han was arrested.

The appeals court found reasonable doubt as to whether Han had ordered diamorphine from Lao Ban, pointing to, among other things, the critical phone conversation between Khor and Lao Ban on March 2, 2016, where Lao Ban repeatedly referred to the bundle he intended Han to receive as a "yellow bundle", whereas the bundle eventually attributed to Han in the charge was a black bundle.

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The prosecution's case essentially rested on the CNB officer's interpretation of Lao Ban's instructions, though it was apparent there was a discrepancy between those instructions and the physical reality presented by the bundles in question.

The court also found Han's defence to be consistent with the objective evidence of the phone conversations, raising the possibility of a mix-up in the drug orders.

"In essence, we think a reasonable doubt has arisen in relation to the charge that was brought against Han. However, we also think that based on Han's own evidence, consideration should be given to an alternative charge being pressed against him for attempting to commit a different offence," it said.

The court set a new two-stage framework for whether an "impossible attempt" amounts to a criminal attempt. The court ruled that for a conviction of attempt, it had to be shown whether the accused had a specific intention to commit a criminal act and whether there were sufficient acts by the accused person to pursue that intention.

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