

IN THE HIGH COURT OF MALAYA AT KUANTAN

IN THE STATE OF PAHANG DARUL MAKMUR

CRIMINAL REVISION NO. CA-43-3-01/2024

BETWEEN

MOHAMMAD MANIK ALI

...APPLICANT

(BANGLADESH PASSPORT NO. : EH0646968)

AND

PUBLIC PROSECUTOR

...RESPONDENT

GROUND OF JUDGMENT

BACKGROUND

[1] The Applicant was charged under s. 6(1)(c) of the Immigration Act 1959/63 for entering Malaysia without a valid Pass lawfully issued to him. He was alleged to have committed the offence on 12.10.2023. On 22.11.2023 he pleaded guilty to the charge and was convicted and sentenced by the learned Magistrate to 9 months imprisonment from the date of his arrest and 1 stroke of caning.



[2] Vide a letter to this Court from his solicitor dated 23.1.2024, the Applicant filed for a criminal revision under s. 323(1) of the Criminal Procedure Code and s. 35(1) of the Courts of Judicature Act 1964 against the charge, the conviction and sentence, as it was alleged that there was a miscarriage of justice arising from an alleged irregularity of procedure.

[3] I had agreed to exercise my powers and called for the matter to be revised pursuant to s. 323(1) of the CPC.

[4] The main ground cited by the Applicant's counsel to support his contention that there was a miscarriage of justice that called for this Court's intervention by way of this revision is that the Applicant had registered for the Government's Program Rekalibrasi Tenaga Kerja 2.0 ("RTK 2.0").

[5] In support of his contention, the learned Counsel referred this Court to the Applicant's documents in support of his application as in enclosure 3, particularly the document issued by the Bahagian Penguatkuasaan of the Jabatan Imigresen Malaysia as in Lampiran B, as shown below:





BAHAGIAN PENGUATKUASAAN



E 00646968

NO. DOKUMEN : EH0646968

TARIKH : 10/08/2023

SHAH ALAM
JABATAN IMIGRESEN NEGERI SELANGOR,
TINGKAT 2, KOMPLEKS PKNS,
40550 SHAH ALAM,
SELANGOR

Tuan,

PROGRAM REKALIBRASI TENAGA KERJA 2.0

Sila periksa dan sahkan subjek di bawah :

No Permohonan	: RCB/RTK/V2/230717/1249560049/511
Nama	: MOHAMMAD MANIK ALI
Warganegara	: BANGLADESH
Jantina	: LELAKI
Tarikh Lahir	: 16/12/1980
No. Dokumen	: EH0646968
Jenis Dokumen	: PASPORT ANTARABANGSA
Tarikh Tamat Dokumen	: 27/02/2026
Negara Pengeluar	: BANGLADESH
Tarikh Mula Masuk	:
Jenis Pas	: TIDAK DINYATAKAN
Tarikh Tamat Pas	:
No Pendaftaran Syarikat	: 1504186-H
Nama Syarikat	: SRS INTERNATIONAL SDN. BHD.
Pegawai Penerima	: RTKASWAN
Verifikasi	: SELESAI

**Sila berurusan dengan Bahagian Pekerja Asing
untuk tindakan lanjut atau urusan seterusnya**

Surat ini adalah cetakan berkomputer. Tandatangan tidak diperlukan

Rujukan Pendaftaran : IM.101/B-REKAB/1027/7(415)



[6] A few key information can be obtained from the above document
are as follows:



S/N uk4hWSkbW0ejyipRSrFsRA

**Note : Serial number will be used to verify the originality of this document via eFILING portal

- (i) the Applicant is in possession of a valid Bangaldeshi passport which expires on 27/2/2026;
- (ii) there is no information of the Applicant's entry into Malaysia;
- (iii) there is no information of any Permit or Pass issued in favour of the Applicant;
- (iv) both information as shown in paragraph (ii) and (iii) above showed that the Applicant had entered Malaysia illegally, hence his application to be in the RTK programme;
- (v) the Applicant had applied for the RTK 2.0; and
- (vi) his RTK application status is "Selesai".

[7] The Applicant's counsel argued that the RTK status indicating "Selesai" means that the Applicant's application for the RTK 2.0 had been completed and approved.



[8] The learned Counsel argued that as the Applicant's application had been approved, he is in actual fact in possession of a valid Pass to remain in Malaysia on the day when he was detained.

[9] The learned Counsel had asked this Court to follow two earlier decisions of the High Court in ***Mohammad Jafor Hossain v PP [2017] 8 CLJ 717*** and ***Mohammad Abu Salleh v Ketua Pengarah Imigresen & Iain [2018] 1 LNS 1555*** where the courts in both cases held that although a person detained under the Immigration Act does not possess a valid working permit, but his status as an illegal immigrant entering Malaysia without permission (PATI) changed to an immigrant entering Malaysia with permission after his registration with MyEG and until MyEG completed the process of his application for working permit. It is the learned Counsel's argument that as the Applicant's application for RTK 2.0 had been dealt with by the Immigration Department, the decisions in ***Mohammad Jafor Hossain*** and ***Mohammad Abu Salleh*** shall apply squarely in his favour and that he should not have been prosecuted for an offence under s. 6(1) of the Immigration Act in the first place.

[10] The learned DPP explained to this Court that ***Mohammad Jafor Hossain*** and ***Mohammad Abu Salleh*** does not apply to the facts of this case as it involved re-hiring programme. MyEG, a third party is appointed



to deal with the potential employers and applications for re-hiring would involve payments to MyEG to enable MyEG to submit the application to the Immigration Department. In the case of RTK, as for the Applicant, neither 3rd party nor payments are involved.

[11] The learned DPP also informed this Court that as at the date of the hearing of the revision before this Court, the Applicant had not been approved to be into the RTK 2.0 programme. Apart from that, the potential employer of the Applicant had not submitted further documentations to enable the final processes of the RTK 2.0 and issuance of the PLKS.

FINDING

[12] Upon conducting my own research at the Immigration Department's website, I found that RTK is a Government's special program to regularise PATI to legally work in Malaysia under the employment of approved employers subject to conditions as set out by the Government through the Ministry of Home Affairs and the Immigration Department. Any foreigner approved to come under the RTK programme is still required to have a valid passport and will be issued with the PLKS to continue to work in Malaysia for a period, type of work and employer as specified in the PLKS.



[13] Section 6 of the Immigration Act provides:

(1) No person other than a citizen shall enter Malaysia unless-

- (a) he is in possession of a valid Entry Permit lawfully issued to him under section 10;*
- (b) his name is endorsed upon a valid Entry Permit in accordance with section 12, and he is in the company of the holder of the Permit;*
- (c) he is in possession of a valid Pass lawfully issued to him to enter Malaysia; or*
- (d) he is exempted from this section by an order made under section 55.*

[14] Section 2 defines "Pass" as any Pass issued under any regulations made under this Act entitling the holder thereof to enter and remain temporarily in Malaysia.

[15] PLKS is a form of a Visit Pass, issued by the authorised Immigration Officer/Controller pursuant to paragraph 6(1)(c) of the Immigration Act and also paragraph 11(1)(ii) and sub regulation 11(10) of the Immigration Regulations 1963 ("Regulations").



[16] If the Applicant is issued with the PLKS, the Applicant is allowed to enter and remain in Malaysia and to work in the employment as detailed out in the PLKS. But does not mean that the Applicant is given a *carte blanche* to remain in Malaysia without any restrictions. On the contrary, regulations 11(6) and 11(10) of the Regulations unequivocally states that as a holder of the PLKS, the Applicant is authorised to enter Malaysia within the period stated in the PLKS and subject to whatever conditions stated in that PLKS, including the specific determination as to what work he can carry out and who is his employer.

[17] It is not disputed that the Applicant is a holder of a valid passport and that he had applied to be a person approved under the RTK 2.0, and that the current status of his RTK application indicates “Selesai”.

[18] There was no evidence or confirmation from the Immigration Department to assist this Court to agree with the Applicant’s counsel’s assertion that the Applicant’s RTK status of “Selesai” indicates approval by the authorities.

[19] This Court rule that these facts do not in any manner changed the fact that on the day the Applicant was arrested, the Applicant does not hold any Pass allowing him to remain in Malaysia.



[20] Even if so, the Applicant shall show evidence to this Court that he was issued with the appropriate permission to enter and continue to remain and work in Malaysia, such as PLKS in his favour.

[21] As there was no such evidence before this Court, the fact remain true that on the day he was detained he was not in possession of a valid pass to enter and remain in Malaysia, an act which clearly contravened section 6 of the Immigration Act.

[22] Based on the above findings, I rule that the charge preferred against the Applicant was valid and correct in law. His plea of guilty to the charge was valid and it follows that his conviction and sentence meted out to him was correct in law. Taking into account the circumstances surrounding the case, I altered the sentence meted out by the learned Magistrate from 9 months to 8 months. I am of the view that the order for whipping of 1 stroke ordered by the learned Magistrate is appropriate and I affirmed that order.

STAY OF SENTENCE

[23] The learned counsel had filed for an application to stay the sentence pending the hearing of the Applicant's appeal against my decision. One of



the grounds cited by the counsel in praying for a stay was that the imprisonment period of the Applicant would end on 23.3.2024 - 10 days after the hearing date of the stay application. Apart from that, the counsel raised about the DPP's failure to highlight the existence of letters issued by the Secretary General of the Ministry of Home Affairs, the Solicitor General of Malaysia and the Director General of immigration on the manner of prosecution against PATI who are registered under the RTK 2.0 Programme.

[24] At the hearing of the Applicant's stay application on 13.3.2024, which was about two weeks after the decision of this Court on the revision application, aside from arguing on the reasons why this Court should allow stay of the sentence of imprisonment and caning, the Applicant's counsel specifically brought to the attention of this Court on exhibits MA-6 and MA-7 to the affidavit in support of the stay application, where the following 3 letters were exhibited:

24.1 The 1st letter was from the Secretary General of the Ministry of Home Affairs ("KSU") dated 13.2.2023 addressed to the Honourable Attorney General ("AG"), which contained the following matters:



- (a) the KSU highlighted the Government's recalibration plan to deal with PATI in Malaysia commencing 16.11.2020 which comprise 2 components:
- (i) Program Rekalibrasi Pulang – a program to repatriate PATI who voluntarily surrenders themselves to the authorities; and
 - (ii) Program RTK – a program to regularise PATI by allowing permitted employers to employ PATI;
- (b) technically all of these PATI are persons whom had committed offence under s. 6(1)(c) and s. 15(1)(c) of the Immigration Act and regulation 39(b) of the Immigration Regulations;
- (c) the two stated programs had been carried out since 2020 subject to the affected PATI being exempted from prosecution and instead being offered compound, as per the letters issued by the Honourable AG dated 26.11.2020, 13.7.2021, 7.12.2021 and 10.1.2022; and



(d) as the Government had decided to launch RTK 2.0 for the year 2023 that will end in December 2023, the KSU had requested for the Honourable AG to grant similar exemption for the affected PATI from prosecution as per the past years.

24.2 The 2nd letter was signed by the Honourable Solicitor General dated 3.3.2023. In this letter, the SG informed that the Honourable AG had agreed for the exemption of prosecution of the affected PATI under s. 6(1)(c) and s. 15(1)(c) of the Immigration Act and regulation 39(b) of the Immigration Regulations and instead for them to be compounded when they voluntarily surrender and submit application to join the RTK 2.0 programme.

24.3 The 3rd letter dated 9.3.2023 was addressed to the Director of the Legal Division of the Immigration Department signed by the Director General of Immigration. In that letter the Director General indicated clearly what measures to be taken for PATI whom were detained and investigation papers had been opened against them but if they had registered into the RTK 2.0 Program, either before or after being detained, then prosecution should not be preferred against them.



[25] I had asked the Applicant's counsel as to why was the existence of these letters were not brought to my attention during the hearing of the revision application. I was informed that the learned counsel was provided with the letters only at the stage after he filed the stay application. The DPP however admitted to this Court that all the while she had known about the letters. However, the detention of the Applicant was conducted by the PDRM team and the matter was forwarded to the Office of the Pahang State Legal Advisor/Pahang State Director of Prosecution for advice and decision of prosecution and not the Immigration Department Legal Division. Apart from that, the decision to charge the Applicant was mainly due to the Applicant's failure to produce the RTK slip to the police personnel who detained them as proof that they had applied to be in the RTK 2.0 Programme by the all along about sent to the affected PATI.

[26] Having heard both the counsel of the Applicant and the DPP, I made a ruling that despite having seized myself with the information as contained in the letters as set out above, I cannot revisit my decision on the revision application which I had pronounced 2 weeks earlier. I am clearly functus officio and I do not now have the power to alter that decision.



[27] Taking into account the arguments of the Applicant's counsel and the DPP, and having regard with the contents of the 3 letters that I had set out above and the circumstances upon which the letters were brought to the attention of this Court, I decided to allow the stay application as justice would require that the Applicant should no longer be incarcerated until his appeal is heard by the Court of Appeal. His whipping sentence shall be stayed accordingly.

[28] I ordered for the stay of the sentence against the Applicant subject to the following conditions:

- (i) the Applicant shall be released on bail with two sureties guaranteed by two Malaysian citizens, one of whom shall be the authorised representative of his employer as named in his RTK application;
- (ii) bail amount of RM20,000.00;
- (iii) the Applicant shall report to the nearest police station on the first Monday of every month between 9.00 am – 12.00 noon, and shall provide to the said police station his telephone number, his address and name of his employer; and



(iv) the Applicant shall be subjected to the final decision of the relevant authorities on the RTK 2.0 Programme.

Dated : 13 May 2024

-signed-

(MOHD RADZI BIN HARUN)

Judge

High Court of Malaya

PARTIES:

Solicitor for the Applicant:

Mr Harpal Singh a/l Tara Singh
Tetuan T. Harpal & Associates
No. M3-B-5, Jalan Pandan Indah 4/3A
Pandan Indah, 55100 Kuala Lumpur

Public Prosecutor/Respondent:

Puan Ain Fadilla binti Md Ali (Deputy Public Prosecutor)
Pejabat Penasihat Undang-Undang Negeri Pahang
Unit Pendakwaan, No. 402, Tingkat 4
Mahkota Square, Jalan Mahkota
25000 Kuantan, Pahang Darul Makmur

