IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

District Arrest Case No 902991 of 2024 and 3 others

Public Prosecutor

Against

Muhammad Ryan Rosmani

ORAL JUDGMENT

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Public Prosecutor
v
Muhammad Ryan Rosmani

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District Judge Sharmila Sripathy-Shanaz

16 September 2024

District Judge Sharmila Sripathy-Shanaz:

Introduction

1 Following his plea of guilt, Mr Muhammad Ryan Rosmani ("Mr Ryan") has been convicted of two counts of engaging in a conspiracy to cheat two financial institutions, an offence under s 417 read with s 109 of the Penal Code 1871.[1] He also consents to two charges under s 3(1) read with s 12 of the Computer Misuse Act 1993, being taken into consideration for the purpose of sentencing.[2] These offences pertain to Mr Ryan handing his bank accounts' access code, personal identification number and one-time password to unknown persons thereby facilitating their unauthorised access to banking services. It now falls upon this court to impose a condign sentence.

2 I preface my decision on sentence by addressing several points raised in the Mitigation Plea that warrant a response to set in context what sentencing in this case responds to and relatedly, what it seeks to achieve.

[1] 1st and 2nd Charges, DAC-902991-2024 and DAC902992-2024 respectively

[2] 3rd and 4th Charges, DAC-902993-2024 and DAC-902994-2024 respectively

There is Public Interest in Deterring Cheating Offences that Facilitate Organised Crime

3 Cheating offences under s 417 of the Penal Code encompass a wide spectrum of offending. In this case, the court is concerned with actions that deliberately sought to circumvent safeguards in the banking system and ultimately resulted in the deception of two financial institutions. The act of handing over control of one's bank account to a third party is a key cog in the criminal activities of organised crime syndicates. Sentencing here is about dealing with offenders who help facilitate the activities of such syndicates by giving them access to the legitimate banking system, thereby furthering their criminal enterprise.

4 Where the usurped bank account is then used to funnel illicit proceeds of crime, the egregiousness of the conduct must necessarily be assessed in the context of the burgeoning number of scams-related offences worldwide. I shall not delve into the figures as these are publicly available, however it suffices to highlight that the number of reported scam cases has increased by more than seven-fold, while the amounts lost to scams have quadrupled.[3]

5 These sobering figures underscore the undeniable growing public interest in suppressing scams-related offences. In this connection, the courts play a pivotal role in responding to the urgent need to effectively deter such offences. The penal sanctions imposed on those who, in any capacity, facilitate and fuel these scams must be sufficiently robust to reflect the seriousness of the crime and curb the alarming ease with which many are drawn into committing these offences.

[3] Sentencing Advisory Panel's Guidelines for Scams-Related Offences at [5]

The Factors in the Sentencing Advisory Panel's Guidelines for Scams-Related Offences are Broadly Relevant

6 This brings me to the next issue that arises in the Mitigation Plea, and that is the submission that Mr Ryan's offences fall outside the scope of the Sentencing Advisory Panel's Guidelines for Scams-Related Offences ("the Guidelines").[4] I would observe that while the Guidelines are not expressly applicable to offences under s 417 of the Penal Code, the suite of offence and offender specific factors distilled therein,[5] would, with the *appropriate modifications*, clearly inform the court's assessment of (i) the harm engendered by a s 417 offence involving an offender who has deceitfully procured and thereafter relinquished a bank account that is used to funnel scam proceeds, and (ii) the offender's culpability for the same. It is to this extent, that these factors are relevant to sentencing in the present case.

7 In a similar vein, it would be remiss for the court to disregard the broad sentencing principles enunciated in the Guidelines,[6] that as a matter of logic, are equally germane to s 417 offences of the nature under consideration.

8 In adopting this approach, I am doing no more than responding to the Defence's call for the court to take into account the nature of the charges and the relevant facts and circumstances of this case.[7] To be abundantly clear, I am *not* sentencing Mr Ryan as though he were convicted of the new scams-related offences that only came into force in February 2024.[8] That is not the intent of

[4] Mitigation Plea at [18] to [27]

[5] Guidelines at [13] and [15] to [17]

[6] Guidelines at [5] to [7]

[7] Mitigation Plea at [17]

[8] ss 51(1), 51(1A) and 55A(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 ("CDSA") and ss 8A and 8B of the Computer Misuse Act 1993 ("CMA")

the court, nor the approach that I have adopted. Though for completeness, I should highlight that the s 417 charges Mr Ryan has been convicted of, are punishable with a fine and/or up to 3 years' imprisonment, which accords with the prescribed punishment for an offence under s 55A(1)(a) read with s 55A(1)(b)(ii) punishable under s 55A(5) of the CDSA.[9]

The Applicable Sentencing Factors

9 I now turn to consider the interplay between the facts of this case and the relevant sentencing factors.

Offence-specific factors going towards harm

10 In assessing harm, the following factors inform sentencing.

11 Foremost, the offences involve the **deliberate deception of a financial institution**, which is aggravating as such conduct, if left unchecked has the potential to erode the integrity of, and confidence in, Singapore's financial infrastructure: *Idya Nurhazlyn bte Ahmad Khir v Public Prosecutor and another appeal* [2013] SGHC 238 at [48] to [49].

12 Second, I cannot ignore the **significant harm** that has flowed from Mr Ryan's offences. The Defence's attempt to confine the court's assessment to merely the reputational harm suffered by the victim banks,[10] is erroneous. It bears repeating that harm is a measure of the injury which has been caused to society by the commission of the offence[11] and as the High Court cautioned in *Newton, David Christopher v Public Prosecutor* [2023] SGHC 266 at [64], the

[9] Which carries a prescribed punishment of a fine up to $50,000 and/or up to 3 years' imprisonment

[10] Mitigation Plea at [35] to [37]

[11] *Public Prosecutor v Koh Thiam Huat* [2017] SGHC 123 at [41]

court should look at all the surrounding facts that are relevant and proved, to determine "the real nature of the harm caused" even when the harm in question is plainly not an element of the proceeded charge.

13 In the present case, for the purpose of sentencing, this is sufficiently capacious to encompass the harm flowing from the subsequent illicit use of the two bank accounts opened by Mr Ryan, to funnel scam proceeds of more than $70,000 in a short span of time. The Defence's argument that "no appreciable harm was actually inflicted"[12] is therefore baseless and I reject any characterisation of Mr Ryan's offences as having caused little or low harm.[13]

Offence-specific factors going towards culpability

14 In assessing culpability, the following are relevant considerations.

15 First, Mr Ryan was **motivated by personal gain** as the Statement of Facts makes plain that he was tempted by the prospect of quick cash.[14] This lays to rest the Defence's over-simplistic assertion that he was not motivated by self-interest.[15] As for the Defence's related contention that Mr Ryan had acted out of "a misguided sense of filial piety" to alleviate his family's financial troubles,[16] any sympathy I may hold for his personal circumstances does not erode the established principle of law that financial hardship cannot serve as a justification or mitigation for violating the law: *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR(R) 406 at [10], cited with approval in *Toh Suat Leng Jennifer v Public Prosecutor* [2022] SGHC 146 at [30].

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[12] Mitigation Plea at [37]

[13] Mitigation Plea at [34] to [37]

[14] SOF at [4]

[15] Mitigation Plea at [47]

[16] Mitigation Plea at [47]

16 Second, I find no force in the argument that Mr Ryan's culpability for the offence is low as he "did not know exactly what he was getting into and did not know that he was facilitating the activities of an illegal syndicate".[17] The Statement of Facts makes plain that Mr Ryan *chose* not to make further enquiries after Bro's refusal to tell him what the relinquished bank accounts would be used for.[18] It would thus be perverse for the court to find Mr Ryan's culpability for the offences reduced on account of his own *wilful failure* to make the enquiries incumbent upon him to make. In fact, in assessing his culpability for the offences, I cannot ignore the fact that Mr Ryan had **proceeded to defraud the banks *despite* his suspicions, as to Bro's intentions, being aroused.**

17 To be clear, I do not accept the Prosecution's submission that Mr Ryan's deceitful opening of a new bank account is an offence-specific *sentencing* factor[19] since this is the very *gravamen* of the present s 417 offence. The Sentencing Advisory Panel's guidance that it is aggravating if the offender had opened a new bank account to be handed over,[20] must be understood in the context of the new CDSA offences which criminalise the *relinquishing* of bank accounts, new and existing, to third parties for the purpose of accessing, operating or controlling the account.[21] It is in this specific context that the discrete act of *opening* a bank account, as opposed to handing over control of an existing account, is found to be aggravating since it discloses an added element of deliberation and commitment towards law-breaking. The issue does

[17] Mitigation Plea at [47]

[18] SOF at [4]

[19] Address on Sentence at [12(a)]

[20] Guidelines at [13(a)]

[21] Criminalised by virtue of

not feature in the present case and is thus not a relevant factor that I have regard to in sentencing.

Offender-specific factors

18 Balanced against the aforesaid offence-specific harm and culpability factors, are several offender-specific factors which I give weight to in mitigation. These are Mr Ryan's cooperation with the authorities and his early plea of guilt which I accept are signs of remorse and contrition. I also accept that the present offences are Mr Ryan's first brush with the law, though this is somewhat tempered by the fact that the two offences that have been taken into consideration, had served to entrench Mr Ryan's role in enabling the scammers' illicit scheme.

19 I would reiterate that I do not find it mitigating that the offences were committed out of financial need.

The Sentences Imposed

20 Having regard to (i) the broad sentencing principles implicated in s 417 offences which involve an offender who deceitfully procures and thereafter relinquishes a bank account that is subsequently used to funnel scam proceeds, (ii) the harm, culpability and mitigating factors canvassed, as well as (iii) the maximum prescribed punishment for offences under s 417 of the Penal Code, I take the view that the sentence of 4 weeks' imprisonment sought by Defence Counsel is unduly lenient and would fail to reflect both the seriousness of the offending and deter like-minded individuals who might similarly be enticed to resort to such conduct.

21 In my judgment, upon weighing the various considerations, a sentence of 4 months' imprisonment for the 1st and 2nd Charges respectively, is appropriate and proportionate to the criminality before me.

22 Ordinarily, I would have imposed a slightly higher sentence for the 2nd Charge since it pertains to a second, distinct act of offending. However, the aggravation accruing from this repeat offending is balanced by the fact that the harm flowing from the commission of the second offence is considerably lower than that which ensued from the first offence.[22]

The precedents can be distinguished

23 For completeness, I briefly explain why I was not persuaded by the precedents cited by the Defence.

24 I do not regard the sentence of 3 months' imprisonment imposed for the s 417 offence in *Public Prosecutor v Liao Bang Xiong* [2023] SGDC 228 ("*Liao*") to be an appropriate yardstick against which the present sentences should be calibrated. For present purposes I need only highlight that the harm occasioned by Mr Ryan's offence is higher since more than $70,000 was funnelled through his bank accounts, as opposed to the $50,000 transacted through the offender's account in *Liao*. The culpability of the respective offenders is also not as far removed as the Defence has characterised it to be.

25 I similarly do not regard the sentence imposed on the offender in *Tang You Liang Andruew v Public Prosecutor and another appeal* [2022] SGHC 113 ("*Andruew Tang*") to be instructive given the vastly different factual matrix involved, *viz.* the fact that the offender's bank accounts were not misused, and no losses were caused.[23] That context is entirely absent in the present case. Additionally, the court in *Andruew Tang* had tempered the sentence imposed on account of the principle of parity between the offender and

[22] SOF at para [10] states that $69,800 in scam proceeds was transacted through the account which is the subject matter of the 1st Charge, whereas para [18] of the SOF states that about $2,800 was transacted through the account which is the subject matter of the 2nd Charge.

[23] *Andruew Tang* at [23] and [62]

his co-offenders who had already been sentenced.[24] This consideration does not arise here.

26 For these reasons, I do not find sentencing in the present case to be guided by the precedents cited to me by the Defence. Instead, I have calibrated the sentences by applying my mind to the various factors canvassed earlier to determine where in the range of punishment prescribed for s 417 offences, Mr Ryan's offending behaviour falls.

The Aggregate Sentence

27 I order the sentences to run concurrently. In my judgment, an aggregate sentence of 4 months' imprisonment reflects the egregiousness of the crime, accounts for Mr Ryan's culpability and serves as an adequate deterrent to those who might similarly be enticed to resort to such conduct.

Sharmila Sripathy-Shanaz
District Judge

Benjamin Low (Attorney-General's Chambers) for the Public Prosecutor;
Sui Yi Siong and Janerni Mohan (Harry Elias Partnership LLP)
for the accused.

[24] *Andruew Tang* at [58]