



PRESS RELEASE

Issuance of Correction Directions and Targeted Correction Direction under POFMA regarding Statements by Transformative Justice Collective concerning the Legal Processes for Prisoners Awaiting Capital Punishment and Prosecution of Drug Trafficking Charges

The Ministry of Home Affairs (MHA) is aware of the following publications that contain false statements of fact concerning the legal processes for Prisoners Awaiting Capital Punishment (“PACPs”) and the prosecution of drug trafficking charges in relation to Mohammad Azwan bin Bohari (“Azwan”):

- a. Transformative Justice Collective (“TJC”) article published on its website on 2 October 2024;
- b. TJC’s Facebook, Instagram, TikTok and X posts on 2 October 2024; and
- c. Kokila Annamalai’s (“Kokila”) Facebook and X posts on 2 October 2024 and 3 October 2024 respectively.

Falsehoods

2. The publications make the following false statements:
 - a. The Government schedules and stays executions arbitrarily and without regard for due legal process.
 - b. The State does not bear the legal burden of proving a drug trafficking charge against the accused person.

Facts

Facts pertaining to Azwan’s case

3. An execution will only be scheduled when a prisoner has exhausted all rights of appeal and the clemency process in relation to his or her conviction and sentence.

4. In 2009, Azwan was convicted and sentenced to five years' imprisonment and five strokes of the cane for trafficking methamphetamine and diamorphine. He was also convicted for consumption of methamphetamine and morphine, and possession of cannabis, cannabinal derivatives and diamorphine. He was released from prison in October 2014.
5. On 17 October 2015, he was arrested for drug trafficking again, and underwent trial in the High Court ("HC") for this new drug trafficking charge.
6. Azwan was accorded due legal process. The HC considered the evidence adduced at trial and the arguments put forth by the Prosecution and Azwan's lawyers. After the trial, on 11 February 2019, Azwan was convicted and sentenced to death for possessing not less than 26.5 grammes of diamorphine (*i.e.* pure heroin) for the purpose of trafficking. This is almost two times the amount that would attract the death penalty as stipulated in the Misuse of Drugs Act 1973 ("MDA"), and would have been sufficient to feed the addiction of about 320 abusers for a week. His appeal against his conviction and sentence was dismissed by the Court of Appeal ("CA") on 24 October 2019.
7. Azwan's applications for clemency were denied by the President on 23 March 2020 and on 15 June 2022.
8. Since his appeal against conviction and sentence was dismissed in October 2019, Azwan has been a joint applicant with other PACPs in three legal proceedings. All of these proceedings were dismissed by the HC and/or the CA as they were found to be unmeritorious. In one of these applications, the Court found that the application was an abuse of the court process.
9. On 12 April 2024, Azwan was given notice that his execution was scheduled on 19 April 2024. At that point, he was only involved in one pending court application ("LASCO application"), where he and other PACPs sought a declaration that the policy of not assigning LASCO counsel for post-appeal applications was unconstitutional. The LASCO application did not seek a stay of execution.
10. On 16 April 2024, three days before his scheduled execution, Azwan filed a Criminal Motion ("CM 14") to the CA seeking a stay of execution on the basis that he was involved in the LASCO application. On 17 April 2024, the CA allowed CM 14 and ordered a stay of execution pending the outcome of the LASCO application. The LASCO application was struck out by the HC on 20 May 2024. The subsequent appeal by Azwan and the other PACPs was dismissed by the CA on 9 September 2024.
11. On 19 September 2024, Azwan and 30 other PACPs filed an application ("OA 972") challenging the constitutionality of certain provisions introduced under the Post-appeal Application in Capital Cases Act. OA 972 was a civil application which had no bearing on Azwan's conviction or sentence, and did not seek a stay of execution. On 30 September 2024, Azwan was given notice that his execution was scheduled on 4 October 2024.
12. On 1 October 2024, three days before his scheduled execution, Azwan filed another application for a stay of execution ("CM 40"). Azwan's basis for filing CM 40 was that, amongst other reasons, OA 972 was still pending and he intended to file a "*review application*" against his conviction after OA 972 had been determined by the Court. On

3 October 2024, CM 40 was dismissed by the CA. In its judgment, the CA stated that Azwan's "*intended review application [had] no prospect of success whatsoever and there [was] no basis for the Court to stay his execution to await the outcome in OA 972*" and that "*[n]othing [had] been raised which would call into question the correctness of the applicant's conviction and sentence*".

13. It is clear from the full facts provided above that it is false and misleading to suggest that executions are scheduled or stayed arbitrarily by the State. In fact, the postponement of the first scheduled execution occurred due to Azwan's own act of filing a last-minute application (i.e. CM 14) to seek a stay of execution. After the LASCO application was dismissed by the HC and the CA, there was no longer any basis to stay his execution, and it was scheduled anew.

The State always bears the legal burden of proving a drug trafficking charge against the accused person

14. The Prosecution always bears the legal burden of proving its case against an accused person beyond a reasonable doubt. This also applies to offences under the MDA, including drug trafficking.
15. Under Section 17 of the MDA, anyone who is proved to have possessed specific amounts of controlled drugs is presumed to have possessed those drugs for trafficking.
16. Even where the Prosecution relies on this presumption, it still bears the legal burden in proving the material elements of the charge i.e. the fact of possession and knowledge (of the nature of the drugs), beyond a reasonable doubt. The use of such presumptions is only an evidential tool to prove certain elements of an offence after a predicate fact has been proven by the Prosecution.
17. Further, such presumptions can be rebutted if the accused person is able to show, on a balance of probabilities, that he or she was not trafficking in drugs.
18. At Azwan's trial, the Prosecution called witnesses to prove the trafficking charge, and also presented Azwan's statements to officers from the Central Narcotics Bureau, where he admitted that all the drugs were meant for sale. Azwan did not dispute that the drugs that were found in his possession belonged to him. However, he denied that all of the drugs were for the purposes of trafficking. His defence was that he was a drug addict and would normally set aside 50% of the drugs he obtained for his personal consumption and the other 50% for sale to earn monies to feed his drug habit.
19. The HC found that Azwan's claims at trial were contradicted by his own detailed admissions in his statements to officers from the Central Narcotics Bureau. The HC found that his "*defence of partial consumption was not given sufficient detail... Not only were details lacking, it was raised too belatedly to have any persuasive value.*"
20. Ultimately, the High Court was "*satisfied that the Prosecution had proved its case beyond a reasonable doubt against Azwan*". Therefore, it is false to say that the State does not bear the legal burden of proving a drug trafficking charge against the accused person.

21. The Government takes a serious view of the deliberate communication of falsehoods. The Minister for Home Affairs has instructed the POFMA Office to issue Correction Directions to TJC and Kokila; and for a Targeted Correction Direction to be issued to TikTok Pte Ltd. TJC will be required to carry correction notices on its website and alongside its Facebook, Instagram and X posts, and create a new TikTok post containing a correction notice. Kokila will similarly be required to carry the correction notice on her Facebook and X posts. TikTok will also be required to communicate a correction notice to all end-users in Singapore that had accessed the TikTok post.
22. TJC has again deliberately communicated falsehoods despite the facts having been communicated to them earlier. TJC had previously been issued two Correction Directions on 8 August 2024 and 11 August 2024 for having made similar false statements about the lack of due process accorded to PACPs.
23. It is also noteworthy that TJC had chosen to highlight the drug trafficker's side of the story, while ignoring the fact that he had committed the crime for personal financial gain and disregarded the harms he would cause to his victims – the drug abusers and their loved ones.
24. For the facts of the case, please refer to the Factually article "Corrections regarding false statements concerning legal processes for PACPs and the prosecution of drug trafficking charges" which can be found on this URL: <https://www.gov.sg/article/factually051024>

MINISTRY OF HOME AFFAIRS
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