

Case Summary for:
BHOPINDER SINGH v HONG KONG SAR GOVERNMENT IMMIGRATION DEPARTMENT¹

Court:	Court of First Instance
Judges:	Hon Chow J
Applicant (and Counsel):	Bhopinder Singh (acting in person)
Respondent (and Counsel):	Hong Kong SAR Government Immigration Department (Mr. Sunny Li, Senior Government Counsel (Ag) and Mr. Glibert Mok, Government Counsel of the Department of Justice)
Date heard:	9 August 2019
Date promulgated:	9 August 2019
Full text:	https://v2.hklii.hk/en/cases/hkcfi/2019/1996
<p>ABSTRACT: The Applicant is an Indian national. He overstayed his visa and was later released on recognizance. His torture and non-refoulement claims were all rejected or dismissed. While on recognizance, the Applicant failed to report to the police station on three occasions and were convicted of theft twice. After being discharged from prison, he had been detained pending removal from Hong Kong. After being detained for six months, the Applicant applied for a writ of <i>habeas corpus</i>, claiming that the detention was unlawful.</p> <p>Applying the <i>Hardial Singh</i> principles, the Court ruled the detention to be lawful and dismissed the writ of <i>habeas corpus</i> application. The Court found that the Director of Immigration (the “Director”) had legitimate reasons to detain the Applicant. The length of detention was also reasonable considering that the Applicant had almost no valid reasons to stay in Hong Kong and the risks of absconding or re-offending were high if he was released on recognizance.</p>	
Key words:	Habeas corpus; detention pending removal; lawfulness of detention; administrative law

The Justice Centre is grateful for the assistance rendered by Morrison & Foerster on this case summary.

¹ [2019] HKCFI 1996. Also cited as: [2019] HKCU 3041, and HCAL 2233/2019.

SUMMARY:

Facts and Procedural History:

The Applicant is an Indian national. He arrived in Hong Kong and had overstayed his visa. He lodged torture/non-refoulement claims but they were all rejected by the Director. While the Applicant was on recognizance pending appeal, he was convicted of theft and possession of an identity card relating to another person.

While the Applicant was in prison, the Torture Claims Appeal Board/Non-refoulement Claims Petition Office (“**TCAB/NCPO**”) dismissed his appeal. A deportation order for life was issued against him as well.

After being discharged from prison, the Applicant was detained for two months until he was released on recognizance. Shortly after, the Court of First Instance also refused his application to apply for leave to file a judicial review against TCAB/NCPO’s decision (the “**JR Refusal**”).

In less than a year after being released on recognizance, the Applicant was convicted of theft again and was sentenced to 8 months’ imprisonment. He was released in early February 2019 and had since been detained pending removal from Hong Kong (the “**Detention**”).

The Department of Immigration (the “**Immigration Department**”) conducted three reviews of the Detention between May and July 2019. On all three occasions, the Immigration Department decided to continue detaining the Applicant because (1) his removal was going to be possible within a reasonable time, (2) he might abscond and/or re-offend, (3) he did not have a close connection or fixed abode in Hong Kong, and (4) there were no other circumstances in favor of his release.

Subsequently, the Applicant made an application seeking an order for a writ of *habeas corpus* be issued in respect of his detention.

Issues:

Whether the Applicant’s detention pending removal from Hong Kong was unlawful.

Judgment:

The Court found the detention was lawful and dismissed the Applicant’s application for the issue of a writ of *habeas corpus*.

Reasons for Judgment:

The Court found the Detention was lawful. To reach this conclusion, the Court applied the *Hardial Singh* principles (the “**Principles**”) (para 18).

The Detention was lawful on its face because it was shown in the valid deportation order that the Director intended to deport the Applicant for the purpose of removing him at a later time (para 21). The Court also found the length of detention (i.e., 6 months) to be reasonable in this case. This was because the Applicant lacked further basis to stay in Hong Kong for any longer (except that he was seeking the court's discretion to grant him extension of time to seek leave to apply against the JR Refusal). Additionally, the Court also pointed out that there was nothing to suggest that the Director of Immigration had failed to act with reasonable diligence or expedition to effect the Applicant's removal. Hence, the Detention was compliant with the Principles. (paras 22 to 23)

While the Court affirmed that it would adopt a higher standard than *Wednesbury* reasonableness in assessing a *habeas corpus* application (para 24), it reiterated that it was entitled to place weight on the Director's assessment on fact-sensitive considerations such as the Applicant's risks of absconding or reoffending when making the final decision (para 25). In this case, the Court deferred to the Director's assessment that the Applicant had a high risk of absconding or re-offending because such conclusion was validly made based on the Applicant's past record of failing his reporting obligations on three occasions and committed an offence of theft while on recognizance.

Other Considerations: N/A

Legal Provisions considered:

1. Immigration Ordinance (Cap 115): sections 20(1)(a), 25, 32(3)
<https://v2.hkii.hk/en/legis/ord/115>

Key Cases cited:

1. *Ghulam Rbani v Secretary for Justice for and on behalf of the Director of Immigration* (2014) 17 HKCFAR 138 (applied the *Hardial Singh* principles and ruled that the applicant was entitled to damages for unlawful detention because the Director of Immigration was found not have acted with reasonable diligence and expedition to effect removal) <https://v2.hkii.hk/en/cases/hkcfa/2014/21>
2. *R v Governor of Durham Prison ex p. Hardial Singh* [1984] 1 WLR 704 (an applicant would be entitled to a writ of habeas corpus or an order for release if he/she was not able to be deported or removed by the immigration authority within a reasonable time)
<https://www.bailii.org/ew/cases/EWHC/QB/1983/1.html>
3. *R(A) v Secretary of State for the Home Department* [2007] EWCA Civ 804 (the court, not the executive branch, bears the primary responsibility of determining the legality and reasonableness of a detention) <https://www.bailii.org/ew/cases/EWCA/Civ/2007/804.html>
4. *R(I) v Secretary of State for the Home Department* [2003] INLR 196 (an English law case which summarized the *Hardial Singh* principles at para 46)
<https://www.bailii.org/ew/cases/EWCA/Civ/2002/888.html>