

Case Summary for:
MANSURI, INTEKHAB ALAM MOHAMED SHAKIL REZA v HONG KONG SAR GOVERNMENT¹

Court:	Court of First Instance (“CFI”)
Judges:	Hon Chow J
Applicant (and Counsel):	Mansuri, Intekhab Alam Mohamed Shakil Reza (acting in person)
Respondent (and Counsel):	Hong Kong SAR Government (Mr. Louie Chan, Government Counsel of the Department of Justice)
Date heard:	5 November 2018
Date promulgated:	6 November 2018
Full text:	https://v2.hklii.hk/en/cases/hkcfi/2018/2468
<p>ABSTRACT: The Applicant is an Indian national who was convicted of overstaying his tourist visa in Hong Kong. Before the conviction, he attempted to lodge a non-refoulement claim on multiple occasions, but they were all dismissed. After he was discharged from the prison, a removal order was made against the Applicant. He was then sent to the detention facility in the Castle Peak Bay Immigration Center (the “CIC”) and was taken to apply for a passport at the Consulate General of India. After being detained for two months, the Applicant applied for a writ of <i>habeas corpus</i>, claiming 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 had legitimate reasons to detain the Applicant. The length of detention was also reasonable considering that it would usually take three to four months for the Consulate General of India to issue a travel document, and the Applicant would be ready to be deported once he obtained the passport because he had exhausted all legal avenues to pursue a non-refoulement claim in Hong Kong.</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 [2018] HKCFI 2468. Also cited as: [2018] HKCU 3824, and HCAL 2428/2018.

SUMMARY:

Facts and Procedural History:

The Applicant is an Indian national. He arrived in Hong Kong as a visitor with a limited right of stay and had been overstaying his visa since 23 April 2011. It was only after three years in 2014 that he was arrested for overstaying and was released on recognizance. He lodged a non-refoulement claim in April 2014.

Around three years later in 2017, the Applicant was once again arrested and charged with the offence of breach of condition of stay. Shortly after the arrest, the Director of Immigration rejected the Applicant's non-refoulement claim. The Applicant appealed the decision but it was dismissed by the Torture Claims Appeal Board/Non-refoulement Claims Petition Office ("TCAB/NCPO"). Subsequently, the Applicant applied to the CFI for leave to apply for judicial review of the TCAB/NCPO's decision. The CFI dismissed his application and the Court of Appeal similarly dismissed the Applicant's appeal against the order of the CFI.

The Applicant was convicted of overstaying and was sentenced to ten weeks' imprisonment on 7 August 2018. Then, a removal order was made against the Applicant on 27 August 2018. After being discharged from the prison on 6 September 2018, the Applicant had been detained at the CIC pending his removal from Hong Kong back to India. He was then taken to the Consulate General of India to apply for a passport in early October 2018.

Pending his removal from Hong Kong, a review of detention was conducted in late October 2018. It was decided that the Applicant would not be released on recognizance pending removal. On 1 November 2018, shortly after the review, the Applicant made an application seeking an order that a writ of *habeas corpus* be issued in respect of his detention at the CIC.

Issues:

Whether the Applicant's detention at the CIC pending removal from Hong Kong (the "**Detention**") 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 that the Detention was lawful. To reach this conclusion, the Court applied the *Hardial Singh* principles (the "**Principles**") (para 18). The Principles state that: (i) the Secretary of State must intend to deport the person and can only use the power to detain for that purpose; (ii) the deportee may only be detained for a period that is reasonable in all the circumstances; (iii) if, before the expiry of the reasonable period, it becomes apparent that

the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention; and (iv) the Secretary of State should act with the reasonable diligence and expedition to effect removal.

The Court found the Detention complied with the Principles.

With regard to (i), the Director of Immigration intended to deport the Applicant because a removal order against him was in force and he was being detained for the purpose of pending removal from Hong Kong (para 21).

Regarding (ii) and (iii), the Court found the length of detention, which was two months from the first day of detention on 6 September 2018 until the date of hearing on 5 November 2018, was reasonable in all the circumstances. To begin with, the Applicant had exhausted all legal avenues to pursue his non-refoulement claim so that there was no further legal impediment to the Applicant's removal from Hong Kong. Additionally, it was submitted to the Court that the Consulate General of India usually took about three to four months from the date that a travel document is requested (i.e., 18 September 2018 in this case) to issue that document. (para 22)

On point (iv), the Court ruled that there was nothing to suggest that the Director of Immigration has failed to act with reasonable diligence or expedition to effect the Applicant's removal. (para 23)

Applying the Principles to the facts, the Court concluded that the Detention was lawful.

In addition to the Principles, the Court considered several points raised by the Applicant which contended the Detention. The points include: (1) the passport application process would be expedited if he was released on bail, (2) other detainees at the CIC had been detained for many months but were in fact still waiting to be removed or deported to India, (3) he suffered from physical and mental problems, and (4) he promised not to commit any offense or abscond if he was released on bail.

The Court decided on these points as follows: (1) there was no evidence or basis to support that the Consulate General of India would speed up the process if the Applicant was released on bail, (2) the circumstances of each case must be looked at individually, (3) there was no reason to believe that he would not receive proper medical treatment at the CIC if required, and (4) the likelihood of committing an offense while on bail is irrelevant to the question of the *legality* of his Detention (although it is relevant to the Director of Immigration's assessment as to whether or not to detain a person). (paras 25 to 28)

In conclusion, after considering the Principles and points raised by the Applicant, the Court dismissed the application for the issue of a writ of *habeas corpus*.

Other Considerations: N/A

Legal Provisions considered:

1. Immigration Ordinance (Cap 115): Sections 19(1)(b), 25 and 32(3A)
<https://v2.hklii.hk/en/legis/ord/115>

Key Cases cited:

1. *Bhullar Angad Singh v HKSAR* [2014] HKCFI 1873 (Director of Immigration has a discretion regarding the continued detention of a person pending his deportation as long as the circumstances are reasonable) <https://v2.hklii.hk/en/cases/hkcfi/2014/1873>
2. *Fidelis Ahuwaraezeama Emen v Superintendent of Victoria Prison* [1998] 2 HKLRD 448 (whether or not a *habeas corpus* application should be granted would depend on whether the detention is unlawful) <https://v2.hklii.hk/en/cases/hkcfi/1998/25>
3. *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.hklii.hk/en/cases/hkcfi/2014/21>
4. *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>
5. *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>