

Man on death row gets second chance to appeal drug conviction

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The 15-member legal team that appeared for V Sathya in the Federal Court today.

PUTRAJAYA: A former college student who has been on death row for almost five years for trafficking syabu has been given a second chance to appeal against his conviction.

This comes after the Federal Court allowed V Sathya's review application for breach of natural justice, and set aside a Feb 8, 2022 judgment that affirmed his death sentence.

Chief Justice Tengku Maimun Tuan Mat, who led a three-member bench, said the application under Rule 137 of the Federal Court Rules 1995 was allowed.

The top judge, who sat with Zawawi Salleh and Zabidin Mohd Diah, said the threshold for review was high and Sathya had met the requirements.

“One of the grounds raised by the applicant is that there is a breach of natural justice,” she said, adding that the three-member panel which sat on Feb 8 had departed from the earlier decisions of this court.

She said the current panel exercised its discretion to ensure clarity in criminal law, in particular that involving drug trafficking cases.

“The judgment on Feb 8 is set aside. An appeal will be fixed for rehearing,” she said when delivering the ruling in a packed courtroom filled with lawyers.

Sathya, 30, was represented by 15 lawyers, led by former Federal Court judge Gopal Sri Ram and senior counsel Hisyam Teh Poh Teik, because of the gravity of the issue on pending trials and appeals on trafficking cases.

Lawyer Chan Yen Hui held a watching brief for the Bar Council.

Hisyam today submitted that the Feb 8 bench departed from two Federal Court decisions, made on Nov 13, 2019 and Nov 1 last year, that an accused person must be informed whether they must enter defence on presumed or actual trafficking.

However, there were no written grounds, and Hisyam contended that no person could be put in a disadvantaged position just because the Federal Court did not provide written judgments.

“The accused was denied his constitutional right of equal protection under the law,” he said.

Sri Ram said the Feb 8 verdict had restored the use of double presumptions though not raised by the prosecution.

The law does not allow the court or the prosecution to invoke double presumption against accused persons in drug trafficking cases

It means the presumption of deemed possession and presumed trafficking could not be relied upon.

“The Federal Court (on Feb 8) was using the two presumptions to convict the applicant (Sathya) which is not permitted because of a 1998 decision in Muhammed Hassan v Public Prosecutor,” he said.

He said the Federal Court upheld Sathya’s conviction by applying the double presumption without giving him the opportunity to argue whether Muhammed Hassan was still a good ruling.

Deputy public prosecutor Dusuki Mokhtar argued the review must be dismissed as the court made the right decision to convict Sathya.

Sathya, then a student in risk management at a private college in Kuala Lumpur, and his girlfriend were jointly charged with trafficking 1.8kg and 2.2kg of methamphetamine or syabu, concealed in two luggages.

The offences were committed at the then low-cost carrier terminal near KLIA on Sept 26, 2013.

The girlfriend was acquitted at the close of the defence's case while Sathya was convicted and sentenced to death on Nov 27, 2017. The Court of Appeal also dismissed his appeal.