

Life in prison for Najib: What it means and can he seek release? Lawyers explain



Former prime minister Datuk Seri Najib Razak speaks to journalists outside the Federal Court during a court break, in Putrajaya, Malaysia August 23, 2022. — Reuters pic

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By **Ida Lim**

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KUALA LUMPUR, Aug 24 — Datuk Seri Najib Razak yesterday became the first former prime minister in Malaysia to be imprisoned, after he failed in his final appeal against his guilty verdict over the misappropriation of RM42 million belonging to government-owned SRC International Sdn Bhd.

While the Federal Court yesterday decided to keep the 12-year jail term and RM210 million fine (which will result in an additional five-year jail term if Najib cannot afford to pay this), can Najib seek to be forgiven and released from prison instead of serving the full term? What about his four other criminal trials?

Here's what several criminal lawyers told *Malay Mail* when contacted:

1. Remaining in prison while seeking release

Senior criminal lawyer Datuk Geethan Ram Vincent said that Najib cannot apply for a stay of his sentence, regardless of whether he seeks a review of the Federal Court's decision or whether he pursues a royal pardon.

This means that Najib must remain in prison while waiting for the outcome of either a review application or a pardon bid.

“Yes, he can file for review. Whether he will be successful is another thing as the threshold for review is very high. In the interim, he must serve sentence. There is no stay.

“And yes, he can seek a pardon but that doesn't happen overnight. It takes time,” he told *Malay Mail*.



Vivekananda Sukumaran explained that the current precedent in the Federal Court is that a review is not seen as an appeal, and that a stay application can only be considered or granted when it involves an appeal. —
Picture courtesy of Vivekananda Sukumaran

2. Tell me more about the ‘Review’ route

Vivekananda Sukumaran, co-chair of the Bar Council's criminal law committee, similarly confirmed Najib would have to serve his jail term while waiting for the outcome of his review application or the outcome of his bid for a pardon.

While Najib's lawyer Hisyam Teh Poh Teik yesterday asked for a stay of the jail sentence and fine while his client pursues a review of the Federal Court's decision, Chief Justice Tun Tengku Maimun Tuan Mat dismissed this as there is no provision for such a stay.

Vivekananda explained that the current precedent in the Federal Court is that a review is not seen as an appeal, and that a stay application can only be considered or granted when it involves an appeal.

Citing Rule 137 of the Rules of the Federal Court 1995, he said this rule recognises the Federal Court's inherent power to review its previous decisions in order to prevent an injustice or an abuse of process, and that it has been mostly used to set aside decisions by the Federal Court.

He listed eight broad categories permitting a review, including where there was a coram failure; where the decision had been obtained by fraud or suppression of material evidence; and where there was a clear infringement of statutory law.

The other categories include where court bias can be shown; where the integrity of a court's decision has been critically undermined; where the court failed to understand a clear point; and where it can be demonstrated that the judge read the wrong papers.



Former Malaysian Bar president Salim Bashir Bhaskaran explained that a review bid is an application to get a rehearing of an appeal, and said a separate panel at the Federal Court would hear the application to review the appeal decision. — Picture by Yusof Mat Isa

Since the Federal Court is the highest court in Malaysia and Najib had failed to overturn the previous decisions in the Court of Appeal and High Court which found him guilty in the SRC case, that was his final appeal.

But there is still one last avenue in court that he can try.

Former Malaysian Bar president Salim Bashir Bhaskaran explained that a review bid is an application to get a rehearing of an appeal, and said a separate panel at the Federal Court would hear the application to review the appeal decision.

“Upon convictions being affirmed in Federal Court, any convict does have an avenue to mount a further challenge by way of review under Rule 137 of Rules of the Federal Court,” he said.

“Review does not operate as an appeal, and upon stay of execution of sentencing being denied, the convict will have to serve sentences, while awaiting the outcome of review applications,” he said.

However, it is not guaranteed that an application for the review would be granted, as it is rare for the Federal Court to decide an appeal should be reheard.

A review application is also not equivalent to an appeal, which means it would not be about whether the appeal was correctly decided based on the evidence.

“The application can be grounded upon based on various circumstances. The review will only be considered in rare and very exceptional cases.

“The inherent power cannot be invoked to review its own decisions on its merit. Applicant must show that he suffered substantial or serious miscarriage of justice based on various grounds,” he said.

In other words, Salim said a review application should only be “for miscarriage of justice or abuse of process etc. that affects procedural aspects in ensuring justice without touching on facts and evidence of a case”. He said examples of these procedural aspects would include “corum failures, biasness, submission not considered, erroneous application of laws”.

3. ‘Pardon me’

Salim said the royal pardon is entrenched in the Federal Constitution’s Article 42(1), which bestows on the Yang di-Pertuan Agong or Sultan the powers to grant a pardon or reprieve to a convict, and that it would have the effect of removing legal punishments and giving a person a “clean slate”.

Noting that seeking a pardon is an “extraneous process outside the court system” and as seeking for a stay is part of the court process when it involves appeals or review applications, Salim confirmed that the question of obtaining a stay does not apply when waiting for a pardon outcome.

As for how long it would take to know the outcome of requests for a pardon, Salim said: “This depends and by an ordinary process via pardon boards, it takes months.”



Senior criminal lawyer Datuk Geethan Ram Vincent said that Datuk Seri Najib Razak cannot apply for a stay of his sentence, regardless of whether he seeks a review of the Federal Court’s decision or whether he pursues a royal pardon. — Picture by Firdaus Latif

4. Going to court as a prisoner: What happens?

Asked about the other trials that Najib is facing, Geethan said he would have to attend all such cases.

“He will be brought from prison and he has to follow prison protocol,” he said, adding that prison protocol would mean Najib “has to be handcuffed when he leaves prison”.

Tomorrow will be Najib’s first time attending a criminal trial since his imprisonment, with High Court judge Datuk Collin Lawrence Sequerah expected to continue hearing Najib’s trial involving 25 charges over the alleged misappropriation of more than RM2 billion of 1Malaysia Development Berhad (1MDB) funds.

As for court proceedings for civil lawsuits which Najib had filed or which had been filed against him, Geethan confirmed that Najib would be allowed to attend such court proceedings while serving his jail sentence.

Asked about Najib’s attire in court as a prisoner, Geethan said: “Generally, all convicted prisoners wear a prison uniform. I’m not sure if they will make exceptions.”

When Najib is brought out from prison to attend trials, Vivekananda confirmed that his family members would be able to meet him.

Vivekananda said: “He may have to wear prison clothing, but from precedent, we have seen some instances where accused persons were allowed to change into their civilian clothing (Anwar Ibrahim)”.

He explained that it would be a “must” for Najib to attend criminal cases’ proceedings in court, while he would only have to attend court proceedings for civil cases “if there’s a need”.

“For the civil lawsuits his attendance is not compulsory. Only counsels are required to attend to the civil matters,” he said.

Vivekananda explained that only when the judge in a civil case sees it necessary for a prisoner to attend, such as in an application for evidence in court, a court order to produce the prisoner in court can then be issued for the person to attend.

Salim, meanwhile, explained: “Any prisoners in remand or convicts will be transported by prison authorities to the courts upon receiving notice to produce. The attire of cell inmates very much depends on prison rules, but commonly, those who are attending court proceedings are allowed to wear civilian clothing.

“Those brought to court from prison are bound by certain rules and security guidelines imposed by the police and court officials. This is to prevent untoward incidents and harm to the prisoners or others.

“Any meetings with families or others will have to be in a controlled environment and with permission from the authorities. Convicts or prisoners in remand entitled to attend court proceedings be it civil or criminal, whenever the court requires one’s attendance in person,” Salim added.

5. Civil lawsuits not a way out

Asked if Najib could file civil lawsuits to challenge the Federal Court’s decision yesterday to challenge the upholding of his conviction and jail and fine sentence, Geethan said these would have no effect if filed: “Nothing stops him from filing any lawsuits. But those lawsuits have no bearing on the conviction which has been recorded. So far, nobody has ever filed such civil suits challenging the Federal Court’s ruling.”

Salim said the route that convicts can take is to either appeal or pursue review applications in court, pointing out the need for judges to be able to decide criminal cases without pressure or fear of being sued via civil lawsuits.

“Section 14 of Court of Judicature Act 1964 grants immunity to judges from being sued in any civil court for acts or orders done in good faith, in the discharge of judicial duties.

“Judges must be left free to decide based on law and evidence, away from any pressure, and if they keep fearing the hammer of retribution to fall, they cannot decide cases in a way that ensures justice is served. The aggrieved parties can have their remedies by way of an appeal or by review applications,” he explained.

