

## MALAYSIA

# Law experts explain what it means to be detained at His Majesty's pleasure after first Malaysian charged with stalking acquitted



Mohamad Safiq Rosli, 37 (centre) arrives at the Magistrate's Court in Shah Alam January 17, 2024. — Picture by Yusof Mat Isa

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By Zaf Seraj

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KUALA LUMPUR, Jan 21 — Last Wednesday, Malaysia saw its first man charged with stalking under section 507A of the Penal Code acquitted.

The Shah Alam magistrate's court ruled Mohamad Safiq Rosli, 37, to be legally insane at the time he committed the offence of stalking and was ordered to be detained at Hospital Bahagia Ulu Kinta, Tanjung Rambutan in Perak at the Sultan of Selangor's pleasure.

But what does it mean?

Being detained at the pleasure of the ruler means exactly that. One will only be eligible for release at the discretion of the ruler after applying to the pardon's board, said Universiti Malaya's senior law lecturer Haezreena Begum Abdul Hamid.

In the federal territories, it would be at the discretion of the King, while for other states without a Sultan, it would be the ruler of the state, the Yang di-Pertua Negeri.

"How long will they stay in a mental hospital? This we don't know," she said.

The results of the application will depend on the decision of the pardon's board after their quadrennial meeting to deliberate on the appeals that they have received.

If the Pardon's board decides in favour of the person detained, they would recommend to the ruler that he should be released.

"But this would depend on the nature of the crime, whether it is serious and grievous or whether it's the rarest of the rare kind of crime, the amount of violence used, the time that the person has stayed in prison, the remorse shown, the reform shown, his or her behaviour during incarceration and all," Haezreena explained.

However, they can only be discharged from the hospital after the doctor certifies that the person has recovered and has ceased being a threat to themselves and society at large, lawyer Datuk Geethan Ram Vincent said.



Geethan (centre) said that there is an alternative way to break free from the hospital — where relatives or friends may make an application to care for the person admitted to the mental hospital. — File picture by Miera Zulyana

Geethan said that there is an alternative way to break free from the hospital — where relatives or friends may make an application to care for the person admitted to the mental hospital.

However, it should be noted that the success of an application by relatives or friends is still subject to the Criminal Procedure Code.

He said unlike being admitted to a typical hospital, being detained in a mental hospital is as good as a prison, only that they are given treatment.

“He will not be permitted to leave the hospital, it’s akin to prison but in the psychiatric hospital,” Geethan said.

Former president of the Malaysian Bar, Salim Bashir Bhaskaran told *Malay Mail* that sometimes, even though a person was acquitted on the grounds of unsoundness of mind, they may still be detained for the rest of their lives in a mental hospital, but signs of mental improvements would be monitored.



Former president of the Malaysian Bar, Salim Bashir Bhaskaran told Malay Mail that sometimes, even though a person was acquitted on the grounds of unsoundness of mind, they may still be detained for the rest of their lives in a mental hospital. — File picture by Yusof Mat Isa

Further, the defence that Safiq employed, insanity, is most commonly used in serious cases which typically see the death sentence as a punishment, the former Malaysian Bar president disclosed.

Because Safiq was not put behind bars, some members of the public were outraged that a man who stalked and harassed a woman to such an extent was declared legally insane, but

Haezreena reminded the public to look at the situation objectively and to remember that as of now, Safiq is not even a free man because he is detained in a hospital.

Salim, assuring that courts would act fairly said: “Despite public clamour, the court should only decide based on law, facts and evidence before them.

“The courts would be well advised and guided by psychiatric evaluation during trials,” Salim assured.

Geethan also added that because Safiq was declared to be of unsound mind and unaware of his acts, he should not be faulted for it.

“He did not know that what he was doing was an offence due to his mental condition.

“The fact that he is detained in a psychiatric hospital is a form of treatment or rehabilitation as he is not let free.

“As much as we feel for the victim, we must understand that the offender was of unsound mind,” Geethan asserted.