GOOI CHIN WOO
v.
TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ANOR

High Court Malaya, Penang
Collin Lawrence Sequerah JC
[Judicial Review No: 25-68-09-2015]
24 October 2016

Administrative Law: *Exercise of judicial functions — Judicial review — Application for judicial review to declare detention order against application void — Whether what transpired during arrest or investigation stage could not be made subject for a writ of habeas corpus nor a ground for judicial review*

Constitutional Law: *Fundamental liberties — Liberty of person — Validity of detention order — Application for judicial review to declare detention order against application void — Whether applicant's statutory right under s 11(1) of Dangerous Drugs (Special Preventive Measures) Act 1985 ('Act') compromised — Whether there was a breach of art 151(2) Federal Constitution — Whether there was a breach of s 4(1) of Act which rendered detention order void*

This was the application of the applicant for, *inter alia*, a declaration and/or *certiorari* against the respondents' decision that the suspension of detention order and the restriction of the applicant to Mukim 7 (Nibong Tebal), Daerah Seberang Perai Selatan, Pulau Pinang made against the applicant under s 7(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ("the Act") was void and of no effect; and that the detention order under s 6(1) of the Act was void and of no effect. The grounds raised by the applicant were that the applicant's statutory right under s 11(1) of the Act was compromised due to the existence of two suspension orders; the appointment of one Madam Soo Ai Lin who was referred to as the Chairman, when the affidavit ("the said affidavit") filed on behalf of the respondents also referred to one Puan Mariah as the Chairman was in breach of art 151(2) of the Federal Constitution ("FC"); and that there were statements of witnesses that were recorded by persons other than the investigating officer in breach of s 4(1) of the Act which rendered the detention order made under s 6(1) void.

Held (dismissing the application):

(1) Although there were two suspension orders made, a common sense approach would enable one to come to the conclusion that the suspension order under review would have been the current suspension order which in this case was the one on 7 August 2015. Furthermore, the earlier suspension order dated 8 July 2014 had already been cancelled. Accordingly, the circumstances when viewed as a whole showed that there was no other order referred to except the one on 7 August 2015. (paras 31 & 33)

(2) A perusal of the provisions of art 151(2) FC contained nothing to indicate that there had to be only one Advisory Board constituted for the purposes of the review. Therefore, there could be more than one Advisory Board. As for Madam Soo Ai Lin, based on the said affidavit, the only part she played in the review was to sign the form (Borang II) under r 5(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 informing of the notice of the hearing of the representations. (paras 41-42)

(3) It was clear that s 4 of the Act allowed any person to be examined and not only the detainee. Further, the wording used in the section was "may" which did not connote in ordinary parlance that the said police officer "shall" or must examine orally such person. Based on the case of *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri Malaysia & Ors*, even if the detention was irregular under s 3(1) of the Act, or there occurred any irregularity in the investigation stage under s 4 of the Act, that did not render the report of investigation defective and result in the Minister being unable to consider it. The stipulation under s 4(1) of the Act therefore, did not constitute a condition precedent for the making of a detention order under s 6(1) of the Act. (paras 54 & 57)

(4) What was of paramount importance in this instance was that the detention order currently in force and whatever transpired during the arrest or investigation stage could not be made the subject for a writ of *habeas corpus* nor a ground for judicial review. (para 58)

Case(s) referred to:

L Rajenderan R Letchumanan v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2010] 2 MLRA 182 (folld)

Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri Malaysia & Ors [2005] 2 MLRA 231 (folld)

Puvaneswaran Murugiah v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1991] 2 MLRH 255 (refd)

Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min [1976] 1 MLRA 132 (refd)

Tay Lay Beng v. Menteri Hal-Ehwal Dalam Negeri Malaysia & Anor [2004] 2 MLRH 837 (folld)

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure), Rules 1987, rr 5(1), 6

Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3(1), (2)(c), (3), 4(1), 5(2), (4), 6(1), (3), (6), 7(1), (3), 10(1), 11(1), 11C(1)

Federal Constitution, art 151(2)

Rules of Court 2012, O 53 r 3(1)

Counsel:

For the applicant: Andy Ooi Keng Liang; M/s Shariffah, Ooi & Co

For the respondents: Munirah Muhamad Padzil AG's Chambers

JUDGMENT

Collin Lawrence Sequerah JC:

A) Introduction

[1] This is the application of the applicant above named under O 53 r 3(1) of the Rules of Court 2012 for *inter alia*, a declaration and/or *certiorari* against the respondent's decision that the suspension of detention order and the restriction of the applicant to Mukim 7 (Nibong Tebal), Daerah Seberang Perai Selatan, Pulau Pinang made against the applicant dated 7 August 2015 under s 7(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ("the Act") is void and of no effect.

[2] Further, for a declaration and/or *certiorari* that the detention order dated 2 June 2014 under s 6(1) of the same Act is void and of no effect and that the applicant be discharged from all restrictions contained in the suspension of the detention order dated 7 August 2015.

B) Salient Facts

[3] The applicant above-named was arrested under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (hereinafter, the Act) on 4 April 2014.

[4] On 15 April 2014, the Officer designated by the Inspector General of Police (IGP) under s 3(2)(c) of the Act, handed a report of the circumstances surrounding the arrest of the applicant to the Deputy Minister of Home Affairs (DMHA) in order to fulfil a condition to enable the police to conduct investigations exceeding 14 days.

[5] On 29 April 2014, the police investigating officer served a complete report of investigation to the DMHA and to the investigating officer from the Ministry of Home Affairs (Ministry) in accordance with s 3(3) of the Act.

[6] On 22 May 2014, the investigating officer from the Ministry conducted an inquiry as to whether there were reasonable grounds for believing that the applicant has been or is associated with any activity relating to or involving the trafficking in dangerous drugs in accordance with s 5(2) of the Act.

[7] On 30 May 2014, the investigating officer from the Ministry served a copy of a report under s 5(4) of the Act on the DMHA. After considering the said report and upon being satisfied, the DMHA issued a detention order ("DO") against the applicant dated 2 June 2014 in accordance with s 6(1) of the Act for a period of two years at the Pusat Permulihan Akhlak Machang, Kelantan.

[8] The applicant received the DO, the grounds for the DO, and statement of facts together with three copies of the Representation Form (Borang 1) which were all explained to him and served by the police on 2 June 2014 at 11.30pm.

[9] On 3 June 2014, the Officer in charge of the Pusat Permulihan Akhlak, Machang, Kelantan, namely, En Rosdi bin Ahmad met the applicant and explained to him again about the DO, the grounds for the DO, and the statement of facts and also his right to make a representation. The applicant then handed over Borang 1 to the Pusat Permulihan Akhlak, Machang, Kelantan through the said En Rosdi Bin Ahmad who in turn served it upon the Advisory Board. The Advisory Board received the applicant's Borang 1 on 6 June 2014.

[10] On 20 June 2014, the Advisory Board issued a Notice of Hearing of the Representation (Borang II) which was fixed to be heard on 1 July 2014, to the Pusat Permulihan Akhlak, Machang, Kelantan for service upon the applicant.

[11] On 1 July 2014, at 9.00am, the applicant's representation for review was heard by the Advisory Board and attended by the applicant and his advocate and solicitor. During the hearing of the said review, the applicant did not call any witnesses.

[12] On 11 July 2014, the Advisory Board made a recommendation to His Majesty, the Yang di-Pertuan Agong (YDPA) in respect of the representation by the applicant according to s 10(1) of the Act. The YDPA then consented to the DO made by the DMHA under s 6(1) of the Act on 17 July 2014.

[13] On 9 July 2014, the DMHA issued a suspension of the DO under s 7(1) of the Act. The applicant was suspended from his detention with effect from 9 July 2014 at Mukim Nibong Tebal, Daerah Seberang Perai Selatan, Pulau Pinang, under s 6(6) of the Act.

[14] On 9 October 2014, the applicant applied for a change in the venue of his place of restriction and on 17 October 2014, the DMHA agreed that the suspension of the DO upon the applicant be moved to Mukim Daerah Seberang Perai Selatan, Pulau Pinang under s 6(6) of the Act.

[15] On 27 April 2015, the DMHA received three police reports from the Nibong Tebal police station, namely, 4439/15, 3832/15 and 3835/15 showing that the applicant had breached the conditions of the suspension of the DO under s 7(1) of the Act.

[16] On 14 May 2015, the DMHA issued a cancellation of the suspension of the DO under s 7(3) of the Act. On 7 August 2015, the DMHA issued the suspension of the DO under s 7(1) of the Act and the applicant was restricted to Mukim Nibong Tebal, Daerah Seberang Perai Selatan, Pulau Pinang.

[17] On 16 February 2016 at 9.00am, the Advisory Board sat and heard as well as reviewed the applicant's case at the Pusat Permulihan Akhlak Batu Gajah, Perak under s 11 of the Act.

[18] The applicant submitted that the Advisory Board had failed to identify which of the orders made against the applicant was the relevant order for the purpose of review when they convened on 16 February 2016. Hence, this application.

C) The Law

[19] The law in respect of preventive detention is fairly settled. Section 11C(1) of the Act reads as follows:

> "11C. Judicial review of act or decision of Yang di-Pertuan Agong and Minister
>
> (1) **There shall be no judicial review** in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, **save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision**."
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> [Emphasis Added]

[20] In the case of *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 MLRA 132 held as follows:

> "Preventive detention is, therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the court. In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorising detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. **Where personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty.**"
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> [Emphasis Added]

[21] In *Puvaneswaran Murugiah v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1991] 2 MLRH 255, it was held:

> "There has been a consistent current of judicial opinion in our courts, including the latest decisions of the Supreme Court, which indicate that when confronted with the problem of interpreting powers of preventive detention, they have interpreted them strictly so as to require that the provisions of the relevant statute are rigidly and meticulously complied with. (See for example, *Tan Hoon Seng v. Minister of Home Affairs* [1989] 1 MLRA 311, *Rajoo Ramasamy v. Inspector-General of Police & Ors* [1990] 1 MLRA 278 and a series of 11 recent appeals heard together, the first being *Poh Chin Kay v. Menteri Hal Ehwal Dalam*

Negeri Malaysia & Anor And Other Appeals [1990] 1 MLRA 162 **in all of which the detainees succeeded on purely procedural or technical grounds**.)"

[Emphasis Added]

[22] It is clear that the above cases advocate strict compliance with the statutory requirements in matters involving the liberty of a subject. However, it is equally clear that an applicant is entitled to succeed only on procedural grounds.

D) Issues Raised By The Applicant, Reply Of The Respondents And Findings Of The Court

[23] The counsel for the applicant informed this court at the outset of oral submissions that although there were five grounds or points raised in his written submission, he would only be relying upon three grounds or points. Accordingly, I proceeded to hear and determine this application only upon those points raised.

[24] The counsel for the applicant submitted that there were a multiplicity of orders made against the applicant as follows:

(i) Detention Order dated 2 June 2014

(ii) Suspension of Detention Order dated 9 July 2014

(iii) Order of Amended Conditions dated 17 October 2014

(iv) Order of Cancellation of Suspension Order dated 14 May 2015; and

(v) Suspension of Detention Order dated 7 August 2015

[25] The applicant submitted that this therefore, created a cloud of uncertainty as to his right of movement as each order contained separate terms regulating the extent of his freedom. More specifically, contended by the learned counsel, these multiple orders had compromised the statutory right of the applicant under s 11(1) of the Act and s 6 of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 to have the order reviewed.

a) The Applicant's Statutory Right Under Section 11(1) Of The Act Compromised

[26] The applicant's first ground of complaint is related to the averment in the affidavit of Redman bin Safar (Redman), the secretary to the Advisory Board (Board) affirmed on the 12 April 2016, where he had initially alluded to the Board having reviewed a detention order (which he also averred that he had attended). Redman then filed a corrective affidavit where he said that he actually meant suspension of detention order instead of detention order. He also averred that the said review of the suspension of detention order by the Board was held on 16 February 2016.

[27] The applicant submitted that according to s 11 of the Act, every order or direction made by the Minister must be reviewed by an Advisory Board. The applicant therefore argues that since there are two suspension of detention orders (suspension orders) namely, one on 9 July 2014 and one on 7 August 2015, a confusion arises as to which suspension order is being referred to as the one which was the subject of the review.

[28] The respondents however, submit that at all material times, there was only one suspension order referred to and that was the one currently in force, ie 7 August 2015. They submitted that this was a case where the wrong terminology was used and that when the said Redman referred to the detention order, he was actually referring to the suspension order and in any event, he had filed a corrective affidavit to explain this. Therefore, submitted by the respondents, the "Perintah Tahanan Pemohon" referred to in para 2 of the affidavit of Redman (encl 48), actually refers to the suspension order dated 7 August 2015.

[29] The review provisions are contained in s 11 of the Act and reads as follows:

> "11. Review
>
> (1) Every order or direction made or given by the Minister under the subsection 6(1) or (3), or under s 7, or under a (1), so long as it remains in force and whether or not representations under s 9 have been made, be reviewed by an Advisory Board not earlier than twelve months from the date of such order or direction and in any case not later than three months before the expiration of the period mentioned in such order or direction."

[30] Section 6(1) relates to the power to order detention and therefore to the making of a detention order, s 6(3) likewise relates to a detention order whereas s 7 relates to a suspension order. It is this order therefore that was the subject of the review which according to Redman, the Board had reviewed on 16 February 2016.

[31] Although there were two suspension orders made here, a common sense approach would enable one to come to the conclusion that the suspension order under review would have been the current suspension order which in this case was the one on 7 August 2015. Furthermore, the earlier suspension order dated 9 July 2014 had already been cancelled by the order to revoke the suspension order dated 14 May 2015.

[32] Although the wrong terminology had been used to describe the order which resulted in the initial confusion, it was apparent from the circumstances as a whole that Redman could not have been referring to any other order apart from the suspension order dated 7 August 2015 which was subject to review by the Board on 16 February 2016. The Notice of Hearing of the review by the Board dated 2 February 2016 was also exhibited as "RS1" to his affidavit affirmed on 8 March 2016.

[33] Although there were no express averments by Redman to indicate that the review carried out on 16 February 2016 was in respect of the suspension order dated 7 August 2015, the circumstances when viewed as a whole would show that there was no other order referred to. It is regrettable that the terminology employed was erroneous but under the circumstances, it was clear that there was only one order referred to and that was the order of 7 August 2015.

[34] I also associate myself with the views expressed in *Tay Lay Beng v. Menteri Hal-Ehwal Dalam Negeri Malaysia & Anor* [2004] 2 MLRH 837, where Balia Yusof Wahi JC (as he then was) said:

> "I am satisfied that having considered all the evidence before me, the applicant's objection to the misstatement on the date 10 August 2001 is a typographical error in the affidavit encl 7, and there is ample evidence to prove the applicant was arrested on 26 March 2003.
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> ... As alluded to in the earlier part of my judgment and guided by the approach adopted by the court in the case of *Liew Kim Swee v. Menteri Dalam Negeri Malaysia & Anor (supra)*, the affidavit evidence by which this application is determined must be considered as a whole and in its totality."

[35] I therefore find no merit in respect of the applicant's contentions on this issue.

b) Breach Of Article 151 Of The Federal Constitution

[36] The second issue raised on behalf of the applicant is that there has occurred a breach of the provisions of art 151 of the Federal Constitution (Constitution). Article 151 of the Constitution reads:

> "151. Restrictions on preventive detention
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> (1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention:
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> (a) the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and, subject to cl (3), the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be;
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> (b) no citizen shall continue to be detained under that law or ordinance unless an advisory board constituted as mentioned in cl (2) has considered any representations made by him under para (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong may allow.
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> (2) An advisory board constituted for the purposes of this Article shall consist of a Chairman, who shall be appointed by the Yang di-Pertuan Agong and who shall be or have been, or be qualified to be, a judge of the Federal Court, the Court of Appeal or a High Court, or shall before Malaysia Day have been a judge of the Supreme Court, and two other members who shall be appointed by the Yang di-Pertuan Agong."

[37] The applicant submitted that art 151(2) stipulates that there shall be one Chairman of the Advisory Board. However, there is no averment as to whether one Madam Soo Ai Lin who was referred to as the Chairman was properly appointed and had the necessary qualifications.

[38] Further, the applicant contends that the averment in the affidavit filed on behalf of the respondents also refer to a Puan Mariah @ Maliah binti Ahmad as the Chairman and that it was she who had heard the representation under r 5(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure), Rules 1987.

[39] The applicant therefore raised the issue of how was it possible that there were two Chairmen when art 151(2) strictly allows for only one Chairman. The applicant thus contends that there has been a violation of art 151(2).

[40] The respondents by way of reply submitted that art 151(2) only stipulates that every Advisory Board has to have one Chairman but does not stipulate that there has to be only one Advisory Board. In the case involving the applicant, it was Puan Mariah who had sat to hear the review together with two members and therefore if at all any qualifications are to be in issue, it should be that of Puan Mariah and not that of Madam Soo Ai Lin as the latter had only signed the form informing the applicant of the review.

[41] A perusal of the provisions of art 151(2) contains nothing to indicate that there has to be only one Advisory Board constituted for the purposes of the review. I therefore agree with the submission of the learned SFC that there can be more than one Advisory Board which when sitting must also comprise two other members.

[42] As for Madam Soo Ai Lin, a perusal of exh "IM2" to the affidavit of Ismail bin Maliki affirmed on 25 February 2016 (encl 19), indicates that the only part she played in the review was to sign the form (Borang II) under r 5(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure), Rules 1987 informing of the notice of the hearing of the representations.

[43] Therefore, as it was averred in the affidavit of the said Ismail bin Maliki affirmed on 25 February 2016 (encl 19) at para 7 that it was Puan Mariah that chaired the review of the applicant's representations on 1 July 2014, it is her qualifications if at all, that was in issue and not that of Madam Soo Ai Lin.

[44] The qualifications of Puan Mariah are set out in para 9 of the above-mentioned affidavit and it is clear from what was averred that she fulfilled the requirements of art 151(2) of the Constitution. Therefore, there was no need, under the circumstances for Madam Soo Ai Lin, to affirm an affidavit stating her qualifications. I therefore find no merit in this ground raised by the applicant.

c) Breach Of Section 4(1) Of The Act

[45] Another ground raised by the applicant is that there were statements of witnesses that were recorded by persons other than the investigating officer. It was therefore contended that there was a breach of s 4(1) of the Act which reads as follows:

> "4. Examination of persons acquainted with the facts and circumstances of case
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> (1) For the purpose of satisfying the Minister that an order under subsection 6(1) should be made and for the purpose of enabling the Minister to furnish a statement under (b), a police officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined."

[46] It is the applicant's contention that Inspector Zainunah binti Abdul Rahman who was the investigating officer (IO) of the case had requested another police officer to record statements of a few witnesses. It was also contended that the statements given by the applicant and the witnesses to the IO, form the basis of the report under s 3(1) of the Act and that it is this very report by the IO that advises or informs the Minister so as to enable him to make his decision under s 6(1) of the Act.

[47] It was argued therefore that the breach of s 4(1) rendered the report of the IO submitted to the Minister irregular and as a consequence, also vitiated the detention order made by the Minister on 2 June 2014 under s 6(1) of the Act.

[48] The respondents by way of reply submitted that the examination of persons under s 4(1) of the Act is not material. They contended that there was no prejudice to the detention order because in order to make an effective detention order under s 6(1), all that the Minister has to consider is the report of the IO under s 3(3) as well as the report of the IO under s 5(4) of the Act.

[49] Now, s 6(1) reads as follows:

> "6. Power to order detention and restriction of persons
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> (1) Whenever the Minister, after considering:
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> (a) the complete report of investigation submitted under subsection 3(3); and
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> (b) the report of the Inquiry Officer submitted under subsection 5(4), is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a "detention order") direct that such person be detained for a period not exceeding two years."

[50] A perusal of the affidavit of Zainunah binti Abdul Rahman at para 5 reveals that she had considered the statement of the applicant and the witnesses in the process of preparing the full report of the investigation with respect to the arrest and detention of the applicant. At para 6 of her affidavit, she categorically stated that she had met with the applicant and recorded his statement.

[51] In doing so, she had sought the services of Corporal Low Guo Tzong to translate the recording of the statement of the applicant from Mandarin to Bahasa Malaysia. The said Corporal Low Guo Tzong had also affirmed an affidavit to this effect and had denied the allegation raised by the applicant.

[52] Inspector Zainunah binti Abdul Rahman did in her affidavit, allude to the fact that while she herself recorded the statement of the applicant with the services of an interpreter, she did enlist the aid of other police officers to record the statements of other witnesses who were supposed to be acquainted with the facts and circumstances of the case.

[53] With respect to the contention by the applicant that because there occurred a breach of s 4(1), the eventual detention order made under s 6(1) was also vitiated, I am guided and indeed bound by the decision of the apex court in the case of *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri Malaysia & Ors* [2005] 2 MLRA 231 which held, *inter alia*, as follows:

> "The precondition to the exercise of jurisdiction under s 6(1) is, *inter alia*, only a consideration of the report of investigation. There is no stipulation in s 6(1) that it must be the result of a valid detention. **The preparation of the report is governed by s 4 pursuant to which any person may be examined and it is not confined to an examination of only the detained person. The report of the investigation therefore has no direct link with the detention; the only one being that it may contain a statement from the detained person. It can still be considered by the Minister even if it contains a statement from a person whose detention under s 3(1) is irregular.** This is because just as in the case of the use of illegally obtained evidence in a court of law, the Minister may also use such evidence subject to the weight to be attached to it."

[54] It is therefore clear that s 4 of the Act allows any person to be examined and not only the detainee. Further, the wording used in the section is "may" which does not connote in ordinary parlance that the said police officer "shall" or must examine orally such person. In the event, Inspector Zainunah binti Abdul Rahman did record the statement from the applicant while other officers pursuant to her instructions took the statements of the other witnesses. Based upon the case of *Mohd Faizal Haris (supra)*, even if the detention is irregular under s 3(1), or there occurs any irregularity in the investigation stage under s 4, this does not render the report of investigation defective and result in the Minister being unable to consider it.

[55] *Mohd Faizal Haris* case *(supra)* also held:

> "Generally, a writ of *habeas corpus* must be directed against the current order of detention even when the earlier arrest is irregular. It is only when the wording of a statute requires a proper arrest as a condition precedent to the making of a subsequent detention order can a person make a valid complaint of the detention
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> ..... The court was not to concern itself with the vagueness, sufficiency or relevancy of the grounds of detention. Thus, even if the report of investigation was prepared as the result of an illegal arrest, the weight to be attached to it was a matter exclusively within the purview of the Minister. **The court should not be concerned with the use of the report of investigation by the Minister**."
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> [Emphasis Added]

[56] In *L Rajenderan R Letchumanan v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 2 MLRA 182, the Federal Court was invited to depart from what was held in *Mohd Faizal Haris (supra)* and this what the apex court had to say:

(1) This court is not departing from its decision in *Mohd Faizal.* (Paragraph 4)

(2) "**A writ of *habeas corpus* must be directed only against the current detention order even if the earlier arrest of the detainee is irregular.** The court is also not concerned with the vagueness, sufficiency or relevancy of the grounds of detention which is the sphere of the subjective exercise of the Minister's discretion under the various executive legislations unless *mala fide* on his part is shown. Any question on the legality or propriety of the arrest or detention of a detainee at the investigation stage is not a relevant consideration nor is it a precondition to the order of detention of the Minister." (Paragraph 9)

(3) "**Only when statute requires an act to be a condition precedent to the making of a detention order can a valid complaint be made against that detention. Under the Act, as spelt out by s 6(1) thereof, there are two conditions precedent for the Minister to consider before making a detention order, *viz* the complete report of investigation and the report of the inquiry officer.**" (Paragraph 10)

(4) "The scheme under the Act (similarly under the Emergency (Public Order and Prevention of Crime) Ordinance 1969) is that, before a detention order is directed, the police would need to conduct an investigation which includes the power to detain any suspected persons. **The manner of conducting the investigations and arrest at this stage is neither a condition precedent nor a matter which has a direct link with the detention order and thus not a ground for judicial review.**" (Paragraph 11)

[Emphasis Added]

[57] The two conditions precedent stipulated in the above case are found in s 6(1) namely, the complete report of investigation under subsection 3(3) and the report of the inquiry officer under subsection 5(4). The stipulation under s 4(1) of the Act therefore, does not constitute a condition precedent for the making of a detention order under s 6(1) of the Act.

[58] It is clear therefore that what is of paramount importance is the detention order currently in force and whatever transpires during the arrest or investigation stage cannot be made the subject for a writ of *habeas corpus* nor a ground for judicial review. In the premises I, therefore, dismissed the applicant's application.