DATO' SRI MOHD NAJIB TUN HJ ABD RAZAK

v.

MENTERI DALAM NEGERI & ORS

High Court Malaya, Kuala Lumpur
Alice Loke Yee Ching J
[Judicial Review Application No: WA-25-136-04-2024]
22 December 2025

Administrative Law: *Judicial review — Mandamus — Application by applicant seeking an order of mandamus that he be forthwith removed from prison facility to his home residence(s) where he would serve his imprisonment sentence under house arrest — Power of pardon of Yang di-Pertuan Agong under art 42 of Federal Constitution — Whether supplementary order to a pardon order under art 42 valid and could be given effect to — Whether applicant allowed to serve his imprisonment term under house arrest*

Constitutional Law: *Yang di-Pertuan Agong — Power of pardon — Judicial review application by applicant seeking an order of mandamus that he be forthwith removed from prison facility to his home residence(s) where he would serve his imprisonment sentence under house arrest — Power of pardon of Yang di-Pertuan Agong under art 42 of Federal Constitution — Whether supplementary order to a pardon order under art 42 valid and could be given effect to — Whether applicant allowed to serve his imprisonment term under house arrest*

The present judicial review proceedings raised the question of whether a supplementary order to a pardon order made under art 42 of the Federal Constitution ("Constitution") was valid and could be given effect to. The Applicant was convicted by the High Court and punished with imprisonment for a term of 12 years and a fine of RM210 million ("SRC Case"). The Applicant's subsequent appeals to the Court of Appeal and Federal Court were dismissed. Consequently, the Applicant was brought to the Kajang Prison to serve the term of 12 years' imprisonment. Thereafter, the Applicant, through his solicitors, filed several petitions for a complete and/or full pardon in relation to his conviction and sentence in the SRC Case, pursuant to art 42 of the Constitution. The Applicant's petition for pardon was directed to be presented at the 61st Pardons Board Meeting. Subsequent thereto, the Secretariat of the Pardons Board issued a media statement to announce the decision of the Yang di-Pertuan Agong XVI ("YdPA") to grant the Applicant a pardon reducing his imprisonment sentence to six years and the fine to RM50 million ("Early Release Order"). The Applicant then claimed to have received reliable information that, in addition to the Early Release Order, the YdPA had issued a supplementary order ("Addendum Order") which stated that the Applicant was to serve the reduced sentence of his imprisonment under the condition of

home arrest, instead of confinement in Kajang Prison. The Applicant, through his solicitors, then wrote to the 1st, 3rd, 4th, 5th and 6th Respondents to confirm the details of the Addendum Order but received no response. This caused the Applicant to file the present judicial review application seeking, among others, an order of *mandamus* that he be forthwith removed from the Kajang prison facility to his home residence(s) in Kuala Lumpur, where he would serve his imprisonment sentence under house arrest. The pivotal issue herein concerned the validity of the Addendum Order, which would in turn determine the enforceability of the Addendum Order and whether the Applicant was allowed to serve his imprisonment term under house arrest.

Held (dismissing the Applicant's application):

(1) It was, on the facts, patently clear that the Pardons Board tendered its advice on the proposed full pardon as well as the 50% reduction in the imprisonment term. More importantly, was the fact that only one decision was made by the YdPA during that meeting, namely, the reduction of the imprisonment term and the fine. There was absolutely no mention of a house arrest. Hence, it was indisputable that the house arrest was not deliberated upon at the Pardons Board Meeting. The fact that it was referred to as a supplementary order confirmed it. It followed then that the advice of the Pardons Board was not tendered in respect of the house arrest. The obvious conclusion to draw from this was that the Addendum Order was not made following the procedure of art 42 of the federal Constitution. (paras 44-45)

(2) The exercise of the prerogative of mercy, which was what art 42 was about, must be made by adhering to the procedure stipulated in art 42. Article 42 had prescribed the decision-making process by which the powers of pardon were to be exercised. There must be a meeting of the Pardons Board that the YdPA presided over. The Pardons Board would consider the written opinion of the Attorney General before tendering its advice to the YdPA, and only then could the YdPA make a decision. It was upon due observance of the constitutional requirements that any order issued could be said to be valid. While the power of clemency was a royal prerogative, the Constitution had provided for it to be exercised within the framework of the Constitution. The Pardons Board, as a constitutional body, had an important function of advising the YdPA before a decision was made. The Attorney General, the principal legal adviser to the Government, was a member of the Pardons Board, and it was mandatory for the Pardons Board to consider his views. All these requirements, taken cumulatively, did not envisage a decision of the YdPA outside the Pardons Board Meeting. In other words, the YdPA could not decide independently of the Pardons Board. Undeniably, the house arrest order made in exercise of the powers of clemency was without precedent. It purported to allow him to be confined to the house instead of prison, which fundamentally altered the nature of the imprisonment term. It was, therefore, all the more imperative that a proposed house arrest order be deliberated upon at the Pardons Board Meeting, consonant with art 42. (paras 46-48)

(3) The YdPA was a constitutional monarch who exercised powers and functions in accordance to the provisions of the Constitution. The exercise of the prerogative power of mercy was no exception. It must be exercised within the legal framework providing for safeguards and limits in the Constitution. The Addendum Order was neither deliberated upon nor decided at the 61st Pardons Board Meeting. There was no compliance with art 42. Consequently, it was not a valid order and the principle of non-justiciability could not preclude it from the court's purview. Following therefrom, the Respondents had no duty to obey or enforce it. Conversely, the Applicant had no right to the relief of *mandamus*. (paras 75-77)

Case(s) referred to:

Chiow Thiam Guan & Ors v. Superintendent Of Pudu Prison & Anor [1983] 1 MLRA 244 (distd)

Dato' Dr Zambry Abd Kadir v. Dato' Seri Ir Hj Mohammad Nizar Jamaluddin; Attorney General Of Malaysia (Intervener) [2009] 2 MLRA 100 (folld)

Dato Menteri Othman Baginda & Anor v. Dato Ombi Syed Alwi Syed Idrus [1980] 1 MLRA 18 (refd)

Datuk Seri Anwar Ibrahim v. Mohd Khairul Azam Abdul Aziz & Another Appeal [2023] 3 MLRA 149 (distd)

Juraimi Husin v. Pardons Board Of State Of Pahang & Ors [2002] 2 MLRA 121 (distd)

Karpal Singh v. Sultan Of Selangor [1987] 1 MLRH 215 (refd)

Koon Hoi Chow v. Pretam Singh [1972] 1 MLRH 497 (folld)

Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd [2010] 1 MLRA 325 (folld)

Minister Of Finance, Government Of Sabah v. Petrojasa Sdn Bhd [2008] 1 MLRA 705 (refd)

Public Prosecutor v. Soon Seng Sia Heng & 9 Other Cases [1979] 1 MLRA 384 (refd)

Sim Kie Chon v. Superintendent Of Pudu Prison & Ors [1985] 1 MLRA 167 (refd)

Superintendent Of Pudu Prison & Ors v. Sim Kie Chon [1986] 1 MLRA 131 (distd)

The Attorney General Of Malaysia v. Dato' Sri Mohd Najib Tun Haji Abdul Razak & Another Appeal [2025] 6 MLRA 155 (folld)

Legislation referred to:

Courts of Judicature Act 1964, Schedule, para 1

Federal Constitution, art 42(1), Part IV, Chapter 3

Prison Act 1995, s 43

Prisons Regulations 2000, reg 111(2)

Specific Relief Act 1950, s 44

Counsel:

For the Applicant: Muhammad Shafee Md Abdullah (Muhammad Farhan Muhammad Shafee, Wan Muhammad Arfan Wan Othman, Nur Syafiqah Mohd Sofian, Naresh Mayachandran & Magdalene Wong Sui Hua with him); M/s Shafee & Co

For the respondents: Shamsul Bolhassan (Ahmad Hanir Hambaly @ Arwi, Nurhafizza Azizan, Safiyyah Omar, Ainna Sherina Saipolamin & Zulkifli Sulaiman with him); AG's Chambers

JUDGMENT

Alice Loke Yee Ching J:

Introduction

[1] The proceedings before me raise the question whether a supplementary order to a pardon order made under art 42 of the Federal Constitution is valid and can be given effect to.

[2] The answer to the question will determine the relief sought in this judicial review proceedings, which is to compel the Respondents to execute and act on the terms of the supplementary order.

Key Background Facts

[3] This Judicial Review application is premised on the following events:

(i) On 28 July 2020 the Applicant was convicted by the Kuala Lumpur High Court punished with imprisonment for a term of 12 years and a fine of RM210 million in what has come to be known as the SRC Case;

(ii) The Applicant appealed to the Court of Appeal but on 8 December 2021 his appeal was dismissed. The conviction and sentence of the High Court was upheld;

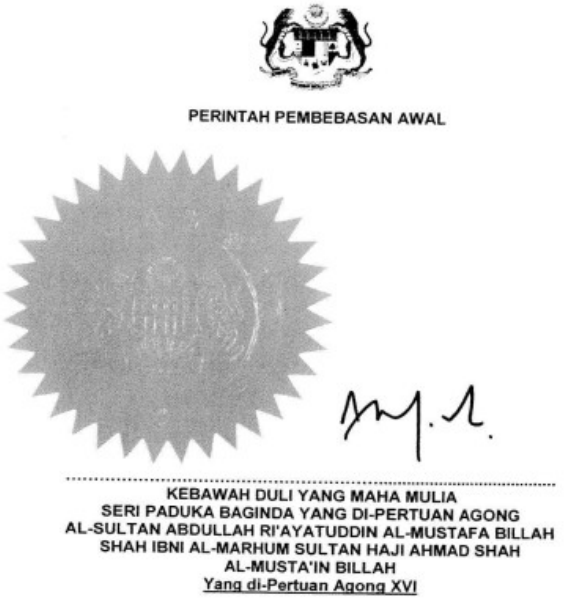
(iii) The Applicant's appeal to the Federal Court was also dismissed on 23 August 2022;

(iv) Consequent upon the decision of the Federal Court, the Applicant was brought to the Kajang Prison to serve the term of 12 years imprisonment;

(v) Thereafter the Applicant, through his solicitors Messrs. Shafee & Co, filed several petitions for a complete and/or full pardon in relation to his conviction and sentence in the SRC Case, pursuant to art 42 of the Federal Constitution;

(vi) On 8 December 2023, the 60th Pardons Board Meeting for the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya, under the purview of the Minister (Law and Institutional Reform) in the Prime Minister's Department and the Director General of the Legal Affairs Division was held. It was presided by His Majesty Seri Paduka Baginda Yang di-Pertuan Agong XVI ("the YdPA"). However, the Applicant's petition for pardon was directed to be presented at the 61st Pardons Board Meeting;

(vii) The 61st Pardons Board Meeting was held on 29 January 2024. Subsequent thereto, on 2 February 2024, the Secretariat of the Pardons Board issued a media statement to announce the YdPA's decision to grant the Applicant a pardon reducing his imprisonment sentence to six years and the fine reduced to RM50 million ("Early Release Order"). The Early Release Order addressed to the Commissioner General of Prison, Malaysia is reproduced below:



PERINTAH PEMBEBASAN AWAL

KEBAWAH DULI YANG MAHA MULIA
SERI PADUKA BAGINDA YANG DI-PERTUAN AGONG
AL-SULTAN ABDULLAH RI'AYATUDDIN AL-MUSTAFA BILLAH
SHAH IBNI AL-MARHUM SULTAN HAJI AHMAD SHAH
AL-MUSTA'IN BILLAH
Yang di-Pertuan Agong XVI

Kepada:

Ketua Pengarah Penjara Malaysia
dan Sekalian Yang Menerima Surat Ini;

S/N wPUUytrRd0GV2phn1yKDMQ
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BAHAWASANYA dalam perbicaraan Wilayah Persekutuan (Perbicaraan Jenayah No.: WA-45-2-7/2018, Perbicaraan Jenayah No.: WA-45-3-7/2018 dan Perbicaraan Jenayah No.: WA-45-5-8/2018, di hadapan Mahkamah Tinggi Malaya di Kuala Lumpur, **DATO' SRI MOHD NAJIB BIN TUN HAJI ABDUL RAZAK (NO. K/P:530723-06-5165)** telah dituduh dengan kesalahan di bawah seksyen 23 dan boleh dihukum di bawah seksyen 24 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694], kesalahan di bawah seksyen 409 Kanun Keseksaan [Akta 574] dan boleh dihukum dengan seksyen yang sama, kesalahan di bawah seksyen 4(1)(b) dan boleh dihukum di bawah seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil Daripada Aktiviti Haram 2001 [Akta 613] dan telah dijatuhkan hukuman penjara secara kumulatif selama tujuh belas (17) tahun mulai daripada tarikh keputusan Mahkamah Persekutuan iaitu pada 22 Ogos 2022.

BAHAWASANYA pada 28 Julai 2020, di hadapan Mahkamah Tinggi Kuala Lumpur **DATO' SRI MOHD NAJIB BIN TUN HAJI ABDUL RAZAK** telah didapati bersalah terhadap semua pertuduhan di dalam ketiga-tiga perbicaraan jenayah tersebut dan memerintahkan kesemua hukuman dijalankan secara serentak. Di hadapan Mahkamah Tinggi Kuala Lumpur membenarkan penangguhan hukuman penjara dan denda tersebut sementara menunggu rayuan.

BAHAWASANYA pada 8 Disember 2021, di hadapan Mahkamah Rayuan telah menolak rayuan **DATO' SRI MOHD NAJIB BIN TUN HAJI ABDUL RAZAK** dan mengekalkan keputusan Mahkamah Tinggi.

BAHAWASANYA pada 23 Ogos 2022, di hadapan Mahkamah Persekutuan telah menolak rayuan **DATO' SRI MOHD NAJIB BIN TUN HAJI ABDUL RAZAK** dan mengesahkan keputusan Mahkamah Tinggi seperti mana yang dikekalkan oleh Mahkamah Rayuan.

BAHAWASANYA dalam perbicaraan Wilayah Persekutuan (Perbicaraan Jenayah No.: WA-45-2-7/2018), **DATO' SRI MOHD NAJIB BIN TUN HAJI ABDUL RAZAK** juga ingkar membayar denda sebanyak RM210,000,000.00, maka secara kumulatif hukuman penjara yang dijatuhkan adalah selama tujuh belas (17) tahun mulai daripada tarikh keputusan Mahkamah Persekutuan iaitu pada 22 Ogos 2022 ke atas **DATO' SRI MOHD NAJIB BIN TUN HAJI ABDUL RAZAK**.

BAHAWASANYA Lembaga Pengampunan bagi Wilayah-Wilayah Persekutuan Kuala Lumpur, Labuan dan Putrajaya kali ke-61 melalui Perkara 42 di bawah Perlembagaan Persekutuan pada 29 Januari 2024 menimbang hukuman banduan dan menasihatkan Seri Paduka Baginda Yang di-Pertuan Agong supaya banduan **DATO' SRI MOHD NAJIB BIN TUN HAJI ABDUL RAZAK** meneruskan baki hukuman;

DAN BAHAWASANYA adalah munasabah pada hemat Beta, belas kasihan patut diberi kepada **DATO' SRI MOHD NAJIB BIN TUN HAJI ABDUL RAZAK**;

MAKA, OLEH YANG DEMIKIAN, Beta, Al-Sultan Abdullah Ri'ayatuddin Al-Mustafa Billah Shah Ibni Almarhum Sultan Haji Ahmad Shah Al-Musta'in Billah, Kebawah Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong XVI, pada menjalankan kuasa yang terletakhak pada Beta oleh Perkara 42 Perlembagaan Persekutuan dan semua kuasa lain yang membolehkan bagi maksud itu ADALAH DENGAN INI MEMERINTAHKAN bahawa **DATO' SRI NAJIB BIN TUN HAJI ABDUL RAZAK dibebaskan pada tarikh pembebasan awal iaitu 23 Ogos 2028 dan denda dikurangkan kepada RM50,000,000.00. Sekiranya denda tidak dibayar, tempoh penjara bagi DATO' SRI NAJIB BIN TUN HAJI ABDUL RAZAK ditambah selama setahun dan tarikh pembebasan adalah pada 23 Ogos 2029.**

PADA MENYAKSIKAN YANG TERSEBUT DI ATAS Beta telah menurunkan tandatangan dan cop Mohor Beta pada 29 JAN 2024

DENGAN TITAH PERINTAH BAGINDA,

(YB DR. ZALIHA MUSTAFA)
Menteri di Jabatan Perdana Menteri
(Wilayah Persekutuan)

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(viii) On 12 February 2024, the Applicant claimed to have received reliable information that in addition to the Early Release Order dated 29 January 2024, the YdPA had issued a supplementary order ('Addendum Order') which states that the Applicant is to serve the reduced sentence of his imprisonment under the condition of home arrest, instead of confinement in Kajang Prison;

(ix) The Applicant through his solicitors then wrote to the 1st, 3rd, 4th, 5th and 6th Respondents to confirm the details of the Addendum Order but received no response;

(x) This caused the Applicant to file the present Judicial Review proceedings on 1 April 2024 seeking orders of *mandamus* to compel the Respondents to do the following:

(a) Confirm the existence of the Addendum Order;

(b) Should the Addendum Order be found to exist, the Applicant is to be forthwith removed from the Kajang prison facility to his home residence(s) in Kuala Lumpur where the Applicant would serve his imprisonment sentence under house arrest;

(c) Provide the original version or copy of the Early Release Order dated 29 January 2024; and

(d) Provide an original version or copy of the Addendum Order dated 29 January 2024.

Litigation History

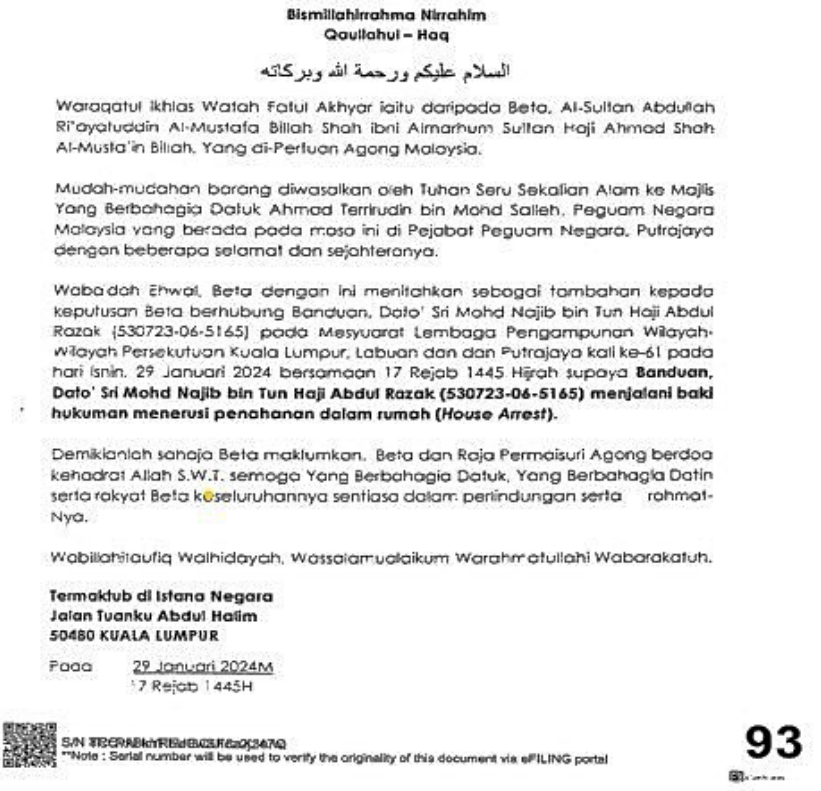
[4] Some mention must be made of the prior litigation leading to the proceedings today, as it had somewhat altered the scope of the reliefs for determination of this court.

[5] Before the existence of the Addendum Order was made certain, the application for leave came before the High Court for hearing on 3 July 2024. Leave was refused.

[6] An appeal was filed to the Court of Appeal and set for hearing. Before the hearing of the appeal, the Applicant sought to introduce new evidence, *inter alia,* a copy of the Addendum Order. The application was allowed by a majority decision. Leave to commence the present judicial review proceedings was also allowed.

[7] The Attorney General appealed to the Federal Court against the grant of leave and adduction of the Addendum Order. On 13 August 2025, the Federal Court dismissed both the appeals and remitted the substantive Judicial Review for hearing. The decision effectively allowed the admission of the Addendum Order. (See: *The Attorney General Of Malaysia v. Dato' Sri Mohd Najib Tun Haji Abdul Razak & Another Appeal* [2025] 6 MLRA 155).

[8] The Addendum Order allowed to be introduced in evidence is reproduced below,



Bismillahirrahma Nirrahim
Qaullahul – Haq

السلام عليكم ورحمة الله وبركاته

Waraqatul Ikhlas Watah Fatul Akhyar iaitu daripada Beta, Al-Sultan Abdullah Ri'ayatuddin Al-Mustafa Billah Shah ibni Almarhum Sultan Haji Ahmad Shah Al-Musta'in Billah, Yang di-Pertuan Agong Malaysia.

Mudah-mudahan barang diwasalkan oleh Tuhan Seru Sekalian Alam ke Majlis Yang Berbahagia Datuk Ahmad Terrirudin bin Mohd Salleh, Peguam Negara Malaysia yang berada pada masa ini di Pejabat Peguam Negara, Putrajaya dengan beberapa selamat dan sejahteranya.

Wabadah Ehwal, Beta dengan ini menitahkan sebagai tambahan kepada keputusan Beta berhubung Banduan, Dato' Sri Mohd Najib bin Tun Haji Abdul Razak (530723-06-5165) pada Mesyuarat Lembaga Pengampunan Wilayah-Wilayah Persekutuan Kuala Lumpur, Labuan dan dan Putrajaya kali ke-61 pada hari Isnin, 29 Januari 2024 bersamaan 17 Rejab 1445 Hijrah supaya **Banduan, Dato' Sri Mohd Najib bin Tun Haji Abdul Razak (530723-06-5165) menjalani baki hukuman menerusi penahanan dalam rumah (*House Arrest*).**

Demikianlah sahaja Beta maklumkan. Beta dan Raja Permaisuri Agong berdoa kehadrat Allah S.W.T. semoga Yang Berbahagia Datuk, Yang Berbahagia Datin serta rakyat Beta keseluruhannya sentiasa dalam perlindungan serta rahmat-Nya.

Wabillahitaufiq Walhidayah, Wassalamualaikum Warahmatullahi Wabarakatuh.

Termaktub di Istana Negara
Jalan Tuanku Abdul Halim
50480 KUALA LUMPUR

Pada 29 Januari 2024M
17 Rejab 1445H

S/N [redacted]
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The Existence Of The Addendum Order

[9] At the time of the commencement of the judicial review proceedings, the existence of the Addendum Order was a matter which was yet to be ascertained, hence the relief as couched in prayer 1; which was to direct the Respondents to "confirm the existence of an Addendum Order dated 29 January 2024."

[10] However, the issue as to its existence has now been settled by the decision of the Federal Court. Quite apart from allowing the Addendum Order to be adduced for the substantive Judicial Review proceedings, the Federal Court expressly stated that its existence was no longer an issue; what remained to be determined was its validity.

[11] The relevant portion of the judgment reads,

> "[106] In this regard, we are not attempting to vary nor confirm the order of the YDPA XVI/Pardons Board dated 29 January 2024. But as of now, the addendum order exists and its status *vis-à-vis* its validity or whether it is true, needs to be ascertained at the substantive hearing, which we do not consider it right or fair for us to express any view on this point at this stage. It is a point

for further investigation on a full inter partes basis with all such evidence as is necessary on the facts and all such arguments as is necessary on the law."

The Reliefs Sought

[12] The developments in the prior litigation have now rendered some of the reliefs unnecessary. As the existence of the Addendum Order is no longer disputed, the relief in Prayer 1 as initially sought no longer arises. Prayer 3 for an original version of the Early Release Order is also no longer necessary.

[13] I also find Prayer 4, which is to direct the Respondents to produce the original Addendum Order to be unnecessary. Counsel for the Applicant thought otherwise, and urged this court to direct the Respondents to produce the original Addendum Order.

[14] I fail to see the purpose of making such an order. As the existence is no longer in dispute, the production of the original would have no bearing on the outcome of this case. It would not in any way bolster the Applicant's case; neither is he disadvantaged by the non-production of it.

[15] In the circumstances, the only relief upon which this court needs to determine is Prayer 2. Bearing in mind the developments in the prior litigation, the relief sought in these proceedings should be amended from its original version to now read as,

> An order of *mandamus* that all the Respondents or any of them be compelled to execute the said order of His Majesty Seri Paduka Baginda Yang Di-Pertuan Agong XVI and to forthwith remove the Applicant from the Kajang prison facility to his known residence(s) in Kuala Lumpur where the Applicant would continue to serve his imprisonment sentence under house arrest.

Legal Principles On Mandamus

[16] The court's power to issue an order of *mandamus* is derived from s 44 of the Specific Relief Act 1950 and also para 1 of the Schedule to the Courts of Judicature Act 1964. (See: *Minister Of Finance, Government Of Sabah v. Petrojasa Sdn Bhd* [2008] 1 MLRA 705).

[17] The circumstances upon which *mandamus* can be granted were enunciated in *Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd* [2010] 1 MLRA 325, where the Court of Appeal held:

> [38] In MP Jain's Administrative Law in Malaysia and Singapore (2 Edn 1980) the learned author said, at pp 449-450:
>
> > ...*Mandamus* can be granted only when a legal duty is imposed on an authority and the applicant has a legal right to compel the performance of the public duty prescribed by law, and to keep the subordinate bodies and officers exercising public functions within the limit of their jurisdiction. *Mandamus* is thus a very wide remedy which is available against a public officer to see that he does his duty.

What can be enforced through *mandamus* is a duty of a public nature the performance of which is imperative and not optional or discretionary with the concerned authority. Thus, if an officer has a power rather than a duty, and if he does not use his power, *mandamus* cannot be issued.

[18] In *Koon Hoi Chow v. Pretam Singh* [1972] 1 MLRH 497, Sharma J had outlined four prerequisites essential to an order of *mandamus* under s 44 of the Specific Relief Act 1950:

(a) whether the applicant has a clear and specific legal right to the relief sought;

(b) whether there is a duty imposed by law on the respondent;

(c) whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the respondent; and

(d) whether the applicant has any remedy, other than by way of *mandamus*, for the enforcement of the right which has been denied to him.

(See also: *Menteri Besar Negeri Pahang Darul Makmur v. Seruan Gemilang Makmur Sdn Bhd* [2010] 1 MLRA 325).

[19] Applying these key principles to the issue at hand, the Applicant has to establish that he has a legal right to the benefit of a house arrest order and the Respondents have a corresponding duty to give effect to it.

Contention Of The Parties

[20] I shall begin by summarizing the parties' respective contentions.

[21] The first line of argument advanced by the Applicant is premised on the principle that the Addendum Order directing house arrest was made in the exercise of the prerogative of mercy; hence it is non-justiciable. A long line of authorities has held the exercise of the YdPA's discretion pursuant to art 42 of the Federal Constitution to be immune from judicial scrutiny. This court is not permitted to scrutinize the Order to determine its validity. By the same reasoning the Respondents are precluded from contending that the Addendum Order is constitutionally invalid on the ground that it was not made in accordance to the constitutional provisions. To do so would be a transgression of the doctrine of non-justiciability.

[22] Secondly, art 42(1) provides for pardon, reprieve and respite, which are three separate and independent clemency powers. The Addendum Order operates as a respite. Unlike a pardon, respite is the total prerogative of the YdPA which does not invite the advisory function of the Pardons Board. The

Constitution mandates a deliberation of the Pardons Board only where a pardon is sought.

[23] Thirdly, even if the Pardons Board has to be convened before a reprieve or respite is issued, the YdPA is not bound to decide within the Pardons Board meeting.

[24] The Respondents, on the other hand, take the position that the Addendum Order is not valid, hence there is no duty to obey it. They contend that constitutional powers, including the prerogative power of mercy must be exercised in conformity with constitutional requirements. The non-justiciability of the exercise of the prerogative of mercy depends on whether it was made in accordance with the requirements embodied in art 42. The entire pardon process in art 42 must first be observed.

[25] The evidence adduced by the Respondents shows that the Addendum Order was not made in compliance with the provisions of art 42. It is evident from the minutes of the 61st Pardons Board Meeting that only one decision was made during the meeting, namely the YdPA's decision to reduce the imprisonment sentence and fine. The issue of house arrest was not deliberated at the said meeting.

Issue For Determination

[26] Premised on the position taken by the parties, there is only one pivotal issue in this Judicial Review Proceedings. It is the validity of the Addendum Order. Its validity or otherwise will in turn determine the enforceability of the Addendum Order and whether the Applicant is allowed to serve his imprisonment term under house arrest.

Analysis And Decision Of This Court

Article 42 Of The Federal Constitution

[27] The starting point for discussion is art 42 of the Federal Constitution. The provisions in so far as it is relevant to these proceedings are as reproduced below,

> Power of pardon, etc.
>
> 42.(1) The Yang di-Pertuan Agong has power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya; and the Ruler or Yang di-Pertua Negeri of a State has power to grant pardons, reprieves and respites in respect of all other offences committed in his State.
>
> (2) Subject to cl (10), and without prejudice to any provision of federal law relating to remission of sentences for good conduct or special services, any power conferred by federal or State law to remit, suspend or commute sentences for any offence shall be exercisable by the Yang di-

Pertuan Agong if the sentence was passed by a court-martial or by a civil court exercising jurisdiction in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya and, in any other case, shall be exercisable by the Ruler or Yang di-Pertua Negeri of the State in which the offence was committed.

...

(4) The powers mentioned in this Article:

(a) are, so far as they are exercisable by the Yang di-Pertuan Agong, among functions with respect to which federal law may make provision under Clause (3) of art 40;

(b) shall, so far as they are exercisable by the Ruler or Yang di-Pertua Negeri of a State, be exercised on the advice of a Pardons Board constituted for that State in accordance with Clause (5).

(5) The Pardons Board constituted for each State shall consist of the Attorney General of the Federation, the Chief Minister of the State and not more than three other members, who shall be appointed by the Ruler or Yang di-Pertua Negeri; but the Attorney General may from time to time by instrument in writing delegate his functions as a member of the Board to any other person, and the Ruler or Yang di-Pertua Negeri may appoint any person to exercise temporarily the functions of any member of the Board appointed by him who is absent or unable to act.

(6) The members of a Pardons Board appointed by the Ruler or Yang di-Pertua Negeri shall be appointed for a term of three years and shall be eligible for reappointment, but may at any time resign from the Board.

....

(8) The Pardons Board shall meet in the presence of the Ruler or Yang di-Pertua Negeri and he shall preside over it.

(9) Before tendering their advice on any matter a Pardons Board shall consider any written opinion which the Attorney General may have delivered thereon.

(10) Notwithstanding anything in this Article, the power to grant pardons, reprieves and respites in respect of, or to remit, suspend or commute sentences imposed by any court established under any law regulating Islamic religious affairs in the State of Malacca, Penang, Sabah or Sarawak or the Federal Territories of Kuala Lumpur, Labuan and Putrajaya shall be exercisable by the Yang di-Pertuan Agong as Head of the religion of Islam in the State.

(11) For the purpose of this Article, there shall be constituted a single Pardons Board for the Federal Territories of Kuala Lumpur, Labuan and Putrajaya and the provisions of cls (5), (6), (7), (8) and (9) shall apply *mutatis mutandis* to the Pardons Board under this Clause except that reference to "Ruler or Yang di-Pertua Negeri" shall be construed as reference to the Yang di-Pertuan Agong and reference to "Chief Minister of the State"

> shall be construed as reference to the Minister responsible for the Federal Territories of Kuala Lumpur, Labuan and Putrajaya.

[28] Within the factual matrix of the present case, the essential features of art 42 to note are:

(i) The YdPA has the power to grant pardons, reprieves and respite;

(ii) The Pardons Board for the Federal Territories shall comprise the Attorney General, the Minister responsible for the Federal Territories of Kuala Lumpur, Putrajaya and Labuan and three other members appointed by the YdPA;

(iii) The Pardons Board tenders its advice to the YdPA for the purpose of exercising his powers of pardon;

(iv) Before the Pardons Board tenders its advice, it shall consider any written opinion of the Attorney General; and

(v) The Pardons Board must meet in the presence of and be presided over by the YdPA.

The Prerogative Of Mercy

[29] The power housed in art 42 is essentially the prerogative of mercy. The royal prerogative of mercy is described as an executive power by its inclusion in Chapter 3 of Part IV of the Federal Constitution. (See: *Public Prosecutor v. Soon Seng Sia Heng & 9 Other Cases* [1979] 1 MLRA 384, *Sim Kie Chon v. Superintendent of Pudu Prison & Ors* [1985] 1 MLRA 167).

[30] Mercy is not the subject of legal rights. Legal rights fall within the province of the courts. Once legal rights end, the individual's recourse is to petition for mercy. The exercise of such mercy is the prerogative of the YdPA, who has the discretion to take into account matters which are extrajudicial.

[31] In *Sim Kie Chon v. Superintendent Of Pudu Prison & Ors (supra)*, the Supreme Court held,

> It is our considered view that the power of mercy is a high prerogative exercisable by the Yang di-Pertuan Agong or the Ruler of a State or the Yang di-Pertuan Negeri, as the case may be, who acts with the greatest conscience and care and without fear of influence from any quarter. (See *Hanratty and Another v. Lord Butler of Saffron Walden* [1971] 115 Solicitors) Journal p 386.

[32] In *Public Prosecutor v. Soon Seng Sia Heng (supra)*, the Federal Court held,

> When considering whether to confirm, commute, remit or pardon, His Majesty does not sit as a court, is entitled to take into consideration matters which courts bound by the law of evidence cannot take into account, and decides each case on grounds of public policy; such decisions are a matter solely for

the executive. We cannot confirm or vary them; we have no jurisdiction to do so.

[33] The exercise of the prerogative of mercy in the Federal Constitution is better appreciated when viewed in its historical context. In this regard, I find valuable guidance in the judgment of Zainon JCA in *Dato' Dr Zambry Abd Kadir v. Dato' Seri Ir Hj Mohammad Nizar Jamaluddin; Attorney General Of Malaysia (Intervener)* [2009] 2 MLRA 100, a case relied on by the Respondents.

[34] The relevant portion of her judgment reads,

[180] Therefore the importance of a brief outline on the issue of Royal Prerogatives, including discretionary and residual powers would be helpful.

[181] I believe that most lawyers dealing with matters relating to prerogatives would gravitate towards its meaning from the English position. Intertwined as it is with conventions, they can see that most conventions are derived from English constitutional practice, some of which are incorporated in the Federal Constitution itself. Examples are those conventions connected to the dissolution of Parliament or State Legislative Assembly and appointment of the Prime Minister. These discretionary and prerogative powers are enjoyed exclusively by the Yang di-Pertuan Agong and the Rulers, respectively.

[182] Thus, it might be instructive to make a quick run past the English Prerogative history, in order to understand ours. I will for this purpose, disregard the period before, but would start with the abolition of the Court of Star Chamber in England then.

[183] Soon after its abolition, the Privy Council was established. Over the years the powers of the Privy Council gave legal form to certain decisions of the Government, whilst the Cabinet exercised its policy-making functions of the executive.

[184] The Monarch in all of these as Head of State and the Government, is personified for Crown purposes. For both the Monarch and Government to govern, powers are needed to able them to perform their constitutional functions. In any case, the rule of law requires that these powers are grounded in law and not outside of the system.

[185] **However the power of the Monarch and the Crown must either be derived from Acts of Parliament or they must be recognised as a matter of common law. Thus in the 17th century, constitutional settlements and the powers of the Crown, were subject to laws and that there were no powers of the Crown which could not be taken away or controlled by statute. Once that is achieved, the courts then accepted that the Monarch and the Crown enjoyed certain powers, rights, immunities and privileges which were necessary for the maintenance of Government. These powers were not shared with private citizens. The terms prerogatives was used as a collective description of these matters**. As Blackstone defined it:

...The medieval King was doth Head of the Kingdom and feudal Lord. He had powers accounted for by the need to preserve the realm against

external enemies and an **undefined residual power which he might use for the public good**...

[186] As we shall see later, Blackstone's definition holds true too in this country.

[187] Back in England again, the common lawyers informed the Stuart Kings that there were two types of prerogatives. Ordinary and absolute prerogative.

[188] The ordinary prerogatives meant that royal functions could only be exercised in defined ways for a specific purpose. In this context, the King dispenses some of his administrative powers through the Ministers; his judicial functions through his judges.

[189] **The absolute prerogative powers are those which the King exercises in his discretion. They include powers of pardon, of giving honours, property and rights, franchise and treasure troves, of acts of state and a host of others, both internal and external matters. Of these the most important prerogative power is I believe, in relation to the Ruler's prerogative in the exercise of his executive authority**.

[190] **If the English prerogative powers seem undefined, the position in this country appears to be the same**. Before our Independence, the Crown Territories of Penang and Malacca received the English prerogatives at common law, which ceased upon Independence. However the executive and discretionary powers conferred on the Governors of Penang, Malacca, Sabah and Sarawak are defined by their respective Constitutions.

[191] The nine Rulers in the Malay States are indigenous Rulers and enjoyed their own prerogatives all along. Inasmuch as extra-constitutional prerogatives if any were carefully considered by the framers of our Constitution, being mindful of the maintenance of the separation of powers, it nevertheless allowed more than a modicum of prerogative and discretionary powers to the Rulers. It would be said that the tone of the negotiations and agreements prior to Independence was based largely on maintaining the balance of differing interests, yet compromising to a large extent to protect and preserve the indigenous rights of the Malay Rulers. An understanding of these fundamentals must be carefully read and understood.

[192] Thus the traditional prerogatives of the Rulers remain and are buttressed by the Constitution of the respective states. In fact upon independence, our Constitution as drafted under the Chairmanship of Lord Reid, preserved and indeed enhanced the monarchy in Malaysia in several ways as seen in its provisions.

[193] However, over the years, even with the guarantee of protection as provided for in art 71, and the preservation of these rights in art 181, some of these prerogative rights have been whittled away by amendments to the Federal Constitution.

[194] **As constitutional monarchs, the powers of the Yang di-Pertuan Agong and the State Rulers are defined in the respective Constitutions**. Generally, the duty of the Yang di-Pertuan Agong is to act upon Ministerial advice.

His powers are more circumscribed. The State Ruler's position is much the same, though it appears that they have more latitude in their respective states. Although in some, limitations are placed by way of conventions.

[195] **What is rarely displayed however, is the fact that the Yang di-Pertuan Agong and Rulers are seised with prerogative privileges and residual rights** and powers. Some of which are expressed, others implied.

[196] In this regard, His Royal Highness' Royal Prerogatives are drawn up in art LXVII and art X of the Perak State Constitution. Article X reads: (X) In amplification and not in derogation of the royal prerogatives hitherto possessed or exercised by the Sovereign the following royal prerogatives among others are vested in the Sovereign:

...

(c) the Fountain of Mercy;

...

[197] As can be seen, the above prerogatives are not exhaustive.

...

[199] It is then a matter of having an understanding of these metaphysics and how they operate. Unobtrusive as they may seem they are in fact omnipresent and their exercise may have far-reaching effect on the governance of the state.

[200] **It must be stressed that the Royal Prerogative, discretionary and residual powers do not repose in the royal personages in vain**. It is best expressed by Viscount Radcliffe in *Burmah Oil Co Ltd v. Lord Advocate* [1965] AC 75 at p 113 where His Lordship observed:

> ... The essence of a prerogative power if one follows Locke's thought, is not merely to administer the existing law — there is no need for any prerogative to execute the law **— but to act for the public good where there is no law, or even to dispense with or override the law where the ultimate preservation of society is in question**.

[201] And similarly in the Malaysian context, it was observed by Lee Hun Hoe CJ (Borneo) in *Government Of Malaysia v. Mahan Singh* [1975] 1 MLRA 489 that:

> ... The King is the first person in the nation — being superior to both Houses in dignity and the only branch of the Legislative that has a separate existence and is capable of performing any act at a time when Parliament is not in being.

[202] Following from that, it has to be said that, **it is not at any time or any situation that this discretionary or prerogative power can be invoked. The general acceptance is that it has to be exercised judiciously**.

[Emphasis Added]

[35] In summary, Her Ladyship opined that the concept of a constitutional monarch was to preserve the sovereignty of the Rulers within a constitutional framework, balancing their powers and privileges within defined constitutional limitations and restrictions. The Federal Constitution recognizes that the Rulers have prerogatives that are both ordinary and discretionary, pardon falling in the latter. However, these powers are not unlimited and there are safeguards and limits to be observed, according to the Constitution which provides for the powers. Ultimately, these powers must be exercised judiciously and for the public good.

[36] The judgment of Zainon JCA was similarly relied on by the Applicant's counsel. Thus, both counsels are on common ground with respect to the principles expressed in that case on the exercise of prerogative powers.

[37] Bearing in mind these principles, it now leaves me to revert to the central issue at hand; the validity of the Addendum Order.

The 61st Meeting Of The Pardons Board

[38] The Addendum Order is dated the same date as the Early Release Order which was made at the 61st Pardons Board Meeting ("Pardons Board Meeting"). In view of this fact, the evidence as to what transpired at the said meeting is material.

[39] The Respondents' evidence on the deliberations of the Pardons Board Meeting was adduced through the Affidavit of the Deputy Director General (Policy and Development) ("the Deputy DG") of the Department of Legal Affairs, affirmed on 16 October 2025 and 31 October 2025 on behalf of all the Respondents. The Department functions as the Secretariat for the Pardons Board Meeting. Her affidavit exhibited the following documents:

(i) The Applicant's Petition for pardon -"PS-2";

(ii) The Pardon Papers for consideration of the Pardons Board Meeting — "PS-3"; and

(iii) The Minutes of the Pardons Board Meeting -"PS-4".

[40] The admissibility of these documents is objected to by the Applicant. The Applicant is aggrieved by the disclosure. He claims they are highly confidential documents. "PS-2" in particular was disclosed unilaterally without his consent. Additionally, part of "PS-4" was redacted, suggesting a selective approach to confidentiality which undermines the integrity of the process.

[41] Although initially classified as "Rahsia", the documents were subsequently de-classified before they were appended to the Deputy DG's affidavit as exhibits. The classification and de-classification of documents is provided for in the Official Secrets Act 1972 [Act 88]. The law permits the disclosure of classified documents. The Deputy DG explained that portions of "PS-4" were redacted

only to protect the confidentiality of the other prisoners whose petitions were also considered at the same Pardons Board Meeting. The admissibility of these documents is therefore beyond question. As for its relevancy, I find the contents of the documents, particularly "PS-4", to be critical and necessary to address the central issue in this case.

[42] The Deputy DG in her Affidavit affirmed on 16 October 2025, stated that at the Pardons Board Meeting, the Applicant's request for a full pardon was deliberated upon. The written opinion of the Attorney General as well as the report and recommendation of the Prisons Department were presented for consideration of the Pardons Board. She then added in her affidavit,

> (h) selanjutnya, YdPA Ke-16 telah mencadangkan supaya Pemohon diberi pengampunan penuh dan meminta supaya ahli Respondent Keempat memberi pandangan. Majoriti ahli-ahli Responden Keempat menyatakan Pemohon tersebut tidak sewajarnya diberikan pengampunan penuh;
>
> (i) kemudiannya, YdPA Ke-16 telah mencadangkan supaya Pemohon diberikan pengurangan 50 peratus bagi hukuman penjara. Setelah mendengar daripada ahli-ahli Responden Keempat, YdPA Ke-16 telah memutuskan untuk membebaskan Pemohon pada tarikh pembebasan awal iaitu pada 23 August 2028 dan denda yang perlu dibayar iaitu sebanyak RM210,000,000.00 dikurangkan kepada RM50,000,000.00. Namun, sekiranya denda tidak dibayar, tempoh penjara bagi Pemohon akan ditambah selama setahun di mana pembebasan beliau adalah pada 23 August 2029 ("keputusan 50% YdPA Ke-16").

[43] Having perused "PS-4," I find the contents to confirm her averment.

[44] It is therefore patently clear that the Pardons Board tendered its advice on the proposed full pardon as well as the 50% reduction in imprisonment term. More importantly is the fact that only one decision was made by the YdPA during that meeting, namely the reduction of the imprisonment term and fine. There was absolutely no mention of a house arrest.

Whether The Addendum Order Was Made In Compliance With Article 42

[45] In the light of this evidence from the Respondents, it is indisputable that the house arrest was not deliberated at the Pardons Board Meeting. The fact that it was referred to as a supplementary order confirms it. It follows then that the advice of the Pardons Board was not tendered in respect of the house arrest. The obvious conclusion to draw from this is that the Addendum Order was not made following the procedure of art 42. The position taken by the Applicant implicitly concedes as much as he contends that the Addendum Order need not be deliberated nor decided at the Pardons Board Meeting. I shall deal with this point in the latter part of my judgment.

[46] In my view, the exercise of the prerogative of mercy, which is what art 42 is about, must be made by adhering to the procedure stipulated in art 42. Article 42 has prescribed the decision-making process by which the powers of

pardon are to be exercised. At the risk of repetition, there must be a meeting of the Pardons Board presided over by the YdPA. The Pardons Board considers the written opinion of the Attorney General before tendering its advice to the YdPA. Then and only then can the YdPA make a decision. It is upon due observance of the constitutional requirements that any order issued can be said to be valid.

[47] Whilst the power of clemency is a royal prerogative, the Federal Constitution has provided for it to be exercised within the framework of the Constitution. The Pardons Board as a constitutional body, has an important function of advising the YdPA before a decision is made. The Attorney General, who is the principal legal adviser to the Government, is a member of the Pardons Board. It is mandatory for the Pardons Board to consider his views. All these requirements taken cumulatively do not envisage a decision of the YdPA outside the Pardons Board Meeting. In other words, the YdPA cannot decide independently of the Pardons Board.

[48] Undeniably, the house arrest order made in exercise of the powers of clemency is without precedent. Article 42 stipulates various orders that can be made namely, pardons, reprieves, respite, remission, suspension and commutation. The Applicant received a reduction in his imprisonment term and fine. The house arrest order purports to allow him to be confined to the house instead of prison. To my mind, this fundamentally alters the nature of the imprisonment term. It is therefore all the more imperative that a proposed house arrest order be deliberated at the Pardons Board Meeting, consonant with art 42.

[49] I am fortified in my views by the judgment of the Federal Court in *The Attorney General Of Malaysia v. Dato' Sri Mohd Najib Tun Haji Abdul Razak & Another Appeal (supra)*. The Federal Court was of the view that the powers of clemency are subject to procedural limits in art 42 when exercising powers of pardon. It was held,

> Firstly, it is not our judgment herein that the Addendum Order is part of the Pardons Order and neither are we saying that it is not. It is premature at this stage for this Court to make such a determination.
>
> Secondly, despite the existence of the Addendum Order, that by itself, does not translate into automatic admissibility of the same. The respondent still has to satisfy the rule and criteria as to the admission of the Addendum Order as new evidence, which we will address accordingly in our judgment.
>
> Thirdly, the existence of the Addendum Order does not automatically render the Addendum Order as valid. This issue would have to be determined at the substantive hearing in the Judicial Review proceedings, if leave is granted. In this context art 42 of the Federal Constitution takes center stage, namely:
>
> > Article 42 of the Federal Constitution governs the royal prerogative of mercy, whereby the Yang di-Pertuan Agong (YDPA) is empowered to

grant pardons, reprieves, and respites in respect of all offences committed in the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya.

The exercise of such clemency by the YDPA is not absolute. It is to be carried out in accordance with the constitutional limits prescribed by art 42, particularly through the framework of advice and procedure embedded therein.

Pursuant to art 42(4)(b), the YDPA is required to act on the considered advice of the Pardons Board for the Federal Territories. His function in the clemency process is therefore inextricably tied to the deliberations and recommendations made by the Board established for that purpose.

The Pardons Board for the Federal Territory of Kuala Lumpur is constituted under art 42(5) of the Federal Constitution, and comprises the learned AG, the Prime Minister, and three other members appointed by the YDPA.

Article 42(8) further mandates that any meeting of the Pardons Board must be held in the presence of the YDPA, who shall preside over its proceedings. This requirement is both procedural and constitutional in nature.

Any failure to adhere strictly to the procedural safeguards and substantive requirements under art 42 will render the entire clemency process susceptible to constitutional challenge and Judicial Review.

[50] Thus, the Federal Court, in no uncertain terms, expressed that the existence of the Addendum Order does not make it valid. Validity is contingent upon adherence to the strict requirements of the Federal Constitution.

Whether The Validity Of The Addendum Order Is Non-Justiciable

[51] The Applicant however, argues that the internal deliberations of the Pardons Board are not open to judicial scrutiny. To do so would offend the doctrine of non-justiciability. The apex courts have consistently held that a decision in the exercise of the prerogative of mercy which includes the decision-making process, to be immune from review by the courts.

[52] Several cases were cited in argument, starting with *Juraimi Husin v. Pardons Board Of State Of Pahang & Ors* [2002] 2 MLRA 121, *Superintendent Of Pudu Prison & Ors v. Sim Kie Chon* [1986] 1 MLRA 131, *Chiow Thiam Guan & Ors v. Superintendent Of Pudu Prison & Anor* [1983] 1 MLRA 244, *Karpal Singh v. Sultan of Selangor* [1987] 1 MLRH 215 and *Datuk Seri Anwar Ibrahim v. Mohd Khairul Azam Abdul Aziz & Another Appeal* [2023] 3 MLRA 149.

[53] In my view, with the exception of *Karpal Singh v. Sultan Of Selangor (supra),* these are cases where the prisoners themselves filed for declarations in relation to decisions made in the exercise of the prerogative of mercy. Applications were then filed to strike out the suits. In striking out the suits, the courts held that

proceedings aimed at questioning the propriety or otherwise of the decisions are not justiciable and the courts have no jurisdiction to determine the matter.

[54] The cases cited can be distinguished from the instant case. There, the decisions made in exercise of prerogative of mercy were sought to be challenged. Here, the decision is sought to be enforced instead. Unlike the present case, the courts in those cases were not called upon to determine the validity of a decision *vis-à-vis* compliance with the constitutional requirements of art 42. Those cases decided that the ultimate decision of the YdPA/Ruler in the clemency process is not open to challenge which is distinctly different from the issue here where its validity depends on whether it was made by adhering to the constitutional provisions in art 42.

[55] In addition, I would not, on account of the position taken by the Respondents, equate that to violating the principle of non-justiciability. Since a *mandamus* is sought to compel the Respondents to execute the terms of the Addendum Order, the Respondents are obliged to be satisfied as to the validity of the Addendum Order. This court in turn, is also entitled to scrutinize the Order against the procedural provisions in the Constitution before granting a *mandamus*. The principle of non-justiciability has no application to the factual matrix of this case.

[56] In the upshot, and for the reasons mentioned, I do not find the Addendum Order to have been made upon due observance with the procedure in art 42.

Whether The Addendum Order Is A Respite Order, And Independent Of A Pardons Board Meeting

[57] The Applicant further contends that the Addendum Order constitutes an act of respite within the meaning of art 42. It is an alternative mode of serving the sentence of imprisonment through home confinement. The respite mechanism, unlike a pardon, does not invite the advisory function of the Pardons Board. It can be exercised independently without convening a Pardons Board Meeting.

[58] In support of this contention, the Applicant argues that the nature of a reprieve and respite is often immediate and urgent. It would not make sense to require such an urgent relief to be deliberated within a Pardons Board Meeting.

[59] My answer to that is firstly, the contents of the Addendum Order do not suggest the terms to be so urgent as to bring it within the meaning of reprieve and respite. Secondly, the Addendum Order was a supplementary order to the Early Release Order. If the reduction in imprisonment term as contained in the Early Release Order was proposed and deliberated at the Pardons Board Meeting, there was no reason not to do the same with the house arrest order. As it was not, the Pardons Board did not have an opportunity to tender its advice on the matter. Thirdly, the argument that it would be impossible to convene a Pardons Board Meeting to grant a respite and reprieve in view of its

urgent nature is but mere conjecture, and cannot be relied on to interpret art 42 to dispense with the requirement for a Pardons Board Meeting.

[60] In any event, there is nothing in art 42 to suggest that a Pardons Board Meeting can be dispensed with when the YdPA makes an order of respite. The fact that respite is expressly mentioned in art 42 puts it within the ambit of the procedure laid down therein. Whilst I agree that pardons, reprieve and respite are three separate powers of clemency, the Constitution does not make any exemption for a Pardons Board Meeting before an order of reprieve and respite is made.

[61] It was urged upon me that in interpreting the Federal Constitution, a less rigid approach ought to be taken, and an expansive interpretation given to the provisions (See: *Dato Menteri Othman Baginda & Anor v. Dato Ombi Syed Alwi Syed Idrus* [1980] 1 MLRA 18). Even if such an approach is taken in construing art 42, I am unable to reach an interpretation that reprieve and respite fall outside the remit of the Pardons Board.

[62] For that reason, it is unnecessary to even decide if the Addendum Order is in essence a respite because I am of the view that pardon, reprieve and respite fall under the purview and procedures laid down in art 42, and all the provisions therein apply regardless of the specific order made.

Whether The YdPA Is Obliged To Decide The Addendum Order Within The Pardons Board Meeting

[63] Finally, the Applicant contends that the Addendum Order need not be deliberated during the Pardons Board Meeting presided by the YdPA. The Applicant contends that the YdPA who presides over the Pardons Board Meeting is not part of the Pardons Board. The Pardons Board, having tendered its advice, the YdPA is entitled to arrive at his decision thereafter, in such manner and at such time as accords with his own satisfaction. In other words, the YdPA's decision can be announced separately.

[64] To my mind, if the provisions of art 42 provide for the YdPA to preside over the Pardons Board Meeting, then art 42 does not envisage a decision by the YdPA to be made outside the meeting. I find it a startling proposition to advance that the YdPA can make prerogative decisions outside the Pardons Board Meeting. It would invite arbitrary decisions, and would not accord with the principle enunciated in *Dato' Dr Zambry Abd Kadir (supra)* that even discretionary prerogative powers have to be exercised judiciously and for the public good.

[65] To conclude, the contention that the YdPA is not bound to decide within the Pardons Board Meeting has no legal foundation and is untenable.

[66] In the circumstances, premised on my reasoning above, the Addendum Order is not a valid order made in the exercise of the prerogative of mercy.

The House Arrest Order

[67] It must therefore follow that this court cannot issue a *mandamus* to direct the Respondents to obey the terms of the Addendum Order by enforcing a house arrest.

[68] In any event, I am of the view that a house arrest order is not capable of execution, there being no legal provision for such mechanism in Malaysia. The Applicant's counsel submitted that the means for implementation are in s 43 of the Prison Act 1995.

[69] Section 43 of the Prison Act 1995 provides,

> 43. Release of prisoners on licence.
>
> (1) Subject to any regulations made by the Minister, the Commissioner General may, at any time if he thinks fit, release on licence and on such conditions as may be specified in the licence, a prisoner serving any term of imprisonment.
>
> (2) The Commissioner General may, at any time—
>
> (a) modify or cancel the conditions referred to in subsection (1); or
>
> (b) by order, recall to prison a prisoner released on licence under subsection (1) but without prejudice to the power of the Commissioner General to release the prisoner on licence again.
>
> (3) Where a prisoner is recalled under paragraph (2)(b), his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding two years or to both.
>
> (4) A prisoner who fails to comply with any condition of the licence issued to him under subsection (1) shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding two years or to both.

[70] Regulation 111 of the Prisons Regulations 2000 provides,

> 111. Release of prisoners on licence.
>
> (1) The Commissioner General may, in his discretion, release a prisoner who is serving any term of imprisonment on licence for such period and on such conditions as he may deem fit to impose.
>
> (2) The conditions of absence and the form of licence shall be substantially set out in the Second Schedule.

[71] The form in the Second Schedule referred to in reg 111(2) is issued by the Commissioner General to the prisoner permitting the release, subject to conditions stipulated therein.

[72] My reading of the relevant provisions is this. The release on licence in s 43 is a decision of the Commissioner General. He exercises his discretion, and in so doing is empowered to impose conditions for release. He determines the duration of the period of release and the place the prisoner is to proceed to. Notwithstanding the release, the prisoner can be recalled to prison at any time in which case, the licence shall cease to have effect.

[73] In the light of these provisions, it can hardly be said that this is the mechanism to implement a house arrest. In a release on licence, the Commissioner General decides on the duration. In the case of the Addendum Order, the duration of the house arrest has already been stipulated, leaving no discretion for the Commissioner General. He is also not given any discretion to recall the Applicant to prison. Clearly the house arrest in the Addendum Order is at variance with the provisions relating to release on licence. It is my view that the release on licence is a statutory power given to the Commissioner General alone.

[74] Having said that, I must add that the Applicant is not precluded from applying for a release to the Commissioner General under s 43 of the Prison Act.

Conclusion

[75] To reiterate, the YdPA is a constitutional monarch, and he exercises powers and functions in accordance to the provisions of the Constitution. The exercise of the prerogative power of mercy is no exception. It must be exercised within the legal framework providing for safeguards and limits in the Constitution.

[76] The Addendum Order was not deliberated nor decided at the 61st Pardons Board Meeting. There was no compliance with art 42. Consequently, it is not a valid order. The principle of non-justiciability cannot preclude it from the court's purview.

[77] Following therefrom, the Respondents have no duty to obey or enforce it. Conversely, the Applicant has no right to the relief of *mandamus*.

[78] In the circumstances, the Judicial Review application in encl 58 is dismissed. I make no order as to costs.