

SERVING AN IMPRISONMENT SENTENCE OUTSIDE PRISON THROUGH A PAROLE ORDER

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ABSTRACT

Lately there has been much discussion on the issue of a 'house arrest' and whether the law in Malaysia permits for a 'house arrest' as there is no specific reference to the term 'house arrest' in any of the laws in Malaysia. It would appear that there may be some difficulty in recognising the correlation between a declaration made by the Minister in charge with the responsibility of prisons of a 'house' as a prison under section 3 of the Prison Act 1995, and an order to serve out remainder of imprisonment sentence outside of prison made by the Parole Board under section 46C(1) of the same Act. It is important to appreciate the difference between the laws pertaining to serving imprisonment sentence inside prison and the laws pertaining to serving imprisonment sentence outside prison. This article discusses the nature of parole, which cannot be equated with a 'house arrest', noting the crucial point that serving imprisonment at any place gazetted as a prison is not parole which contemplates serving imprisonment sentence outside prison.

Keywords: house arrest, parole order, serving imprisonment, sentence outside prison, declaration of prison

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INTRODUCTION

This article discusses the correlation between a declaration by the Home Minister of a ‘house’ as a prison under section 3 of the Prison Act 1995 and an order by the Parole Board to serve out the remainder of imprisonment sentence outside of prison under section 46C(1) of the same Act.

SERVING OF PRISON SENTENCE INSIDE OF PRISON

The title of Chapter XXVII of the Criminal Procedure Code reads: ‘Sentences and the Carrying Out of It.’ Section 282 of the Criminal Procedure Code provides as follows:

Provisions as to execution of sentences of imprisonment

282. With regard to sentences of imprisonment the following provisions shall be followed:

(a) where the accused is sentenced to imprisonment the Court passing the sentence shall immediately forward a warrant to the prison in which he is to be confined and, unless the accused is already confined in that prison, shall forward him in the custody of the police to that prison with the warrant;

(b) every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the prison or other place in which the prisoner is or is to be confined;

(c) when the prisoner is to be confined in a prison the warrant shall be lodged with the officer in charge of the prison;

(d) every sentence of imprisonment shall take effect from the date on which it was passed unless the Court passing the sentence otherwise directs.

The above section expressly mandates the Court that passes an imprisonment sentence on a convict to forward the warrant to the prison in which the convict is to be confined and shall forward the convict in the custody of the police to that prison with the warrant. The

warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the prison.

Further, sections 3 and 5 of the Prison Act 1995 states as follows:

Section 3; Power to declare prisons.

The Minister may, by notification in the Gazette, declare any house, building, enclosure or place, or any part thereof, to be a prison for the purposes of this Act for the imprisonment or detention of persons lawfully in custody and may in like manner declare that any such prison shall cease to be a prison for the purposes of this Act.

Section 5; Description of prison in writs, etc.

In any writ, warrant, or other legal instrument in which it may be necessary to describe a particular prison, any description designating a prison by reference to the name of the place or town where it is situated, or other definite description, shall be valid and sufficient for all purposes.

The Minister in charge with the responsibility of prisons (hereinafter referred to as the Home Minister) may declare any 'house' as a prison for the purposes of imprisonment under the Prison Act 1995. It is important to remember that the Home Minister's powers under section 3 of the Prison Act 1995 is only confined to declaring, by notification in the Gazette, any house, building, enclosure or place, or any part thereof to be a prison for the purposes of the imprisonment. It does not empower the Home Minister to decide in which prison a convict is to carry out the imprisonment sentence.

As we saw earlier, section 282(a) of the Criminal Procedure Code expressly states that where the accused is sentenced to imprisonment, the Court passing the sentence shall immediately forward a warrant to the prison in which he is to be confined. We also saw section 282(b) of the Criminal Procedure Code which states "every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the prison or other place in which the prisoner is or is to be confined." The words 'other place' must necessarily be in reference to a prison so declared under section 3 of the Prison Act 1995 for the purposes of sentence of imprisonment, which may include any house, building, enclosure or place, or any part

thereof. In other words, the Home Minister cannot simply move convicts here and there by merely declaring a place to be a prison.

Further, the transferring of prisoners from one prison to another is the function of the Commissioner General of Prison. Section 10(1) of the Prison Act 1995 states that “The Yang di-Pertuan Agong may appoint a Commissioner General of Prison for Malaysia.” Likewise, section 32(1) of the Prison Act 1995 states that “The Commissioner General may, by order in writing, remove or transfer all or any prisoners confined in a prison to any other prison.”

Respectfully, it is the power of the Commissioner General of Prison appointed by the YDPA to look into the transferring of prisoners from one prison to another.

SERVING OF PRISON SENTENCE OUTSIDE OF PRISON

Nonetheless, it is observed that Malaysia does have laws pertaining to the carrying out sentence outside of prison.

First, let us deal with release on licence pursuant to section 43 (1) of the Prison Act 1995 which states as follows:

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.

Furthermore, section 43(2) of the Prison Act 1995 states:

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.

If reference is made to the Second Schedule of the Prisons Regulations 2000, the order of Release on Licence under Section 43 states that the prisoner is permitted to be released on licence from

prison for a period of days and that the prisoner is required to report back to prison.

Release on licence refers to a temporary release on conditions for a period of days where the prisoner would be recalled to prison. It has to be differentiated from serving the remainder of imprisonment sentence outside prison. An example of such a temporary release under section 43 of the Prison Act 1995 happened on 4th June 2019 where the Kajang Prison allowed two prisoners to join their families for Hari Raya for a week.

The specific reference to the phrase ‘to serve any part of sentence of imprisonment outside prison’ may be found in section 46A(d) of the Prison Act 1995 which states that ““parole” means the release of a prisoner to serve any part of his sentence of imprisonment outside prison pursuant to a Parole Order.”

Moreover, section 46B(2) of the Prison Act 1995 states:

A Parole Board shall consist of the following members who shall be appointed by the Yang di-Pertuan Agong:

- (a) a Chairman, from amongst members of the Judicial and Legal Service;
- (b) a senior prison officer;
- (c) a senior police officer;
- (d) a senior welfare officer; and
- (e) three members of the public.

It is to be noted that parole, unlike release on licence, is a form of release from prison where the serving of the remainder of the sentence is to be carried out outside prison. It must also be noted that the Home Minister has no role in the parole process.

It would be axiomatic that if a ‘house’ has been gazetted to be a prison under section 3 of the Prison Act 1995 by the Home Minister, then clearly that very same ‘house’ cannot at the same time be also considered as ‘outside prison’ for the purposes of parole under the Prison Act 1995, and would necessarily disqualify for consideration

during a parole application as to where the convict is to be released to. This is because section 2 of the Prison Act 1995 clearly states:

“Sentence of imprisonment” means a sentence whether served in confinement in a prison or served on parole, and includes an original sentence passed by a court as well as a sentence awarded by way of commutation.

There are laws referring to release of a prisoner to serve any part of his sentence of imprisonment outside prison pursuant to a Parole Order.

PAROLE BOARD VS PARDONS BOARD

Section 46A(g) of the Prison Act 1995 defines ‘parole order’ as “a release on parole order made by a Parole Board.”

Of importance is section 46I of the Prison Act 1995 which states:

(1) A parolee is deemed to continue serving his sentence of imprisonment during the period of parole—

(a) that begins on the date of release on parole specified in the Parole Order; and

(b) that ends upon the expiration of his sentence of imprisonment taking into account so much of his sentence as shall remain after deducting from it such part of remission of sentence granted, or when the Parole Order is suspended or revoked.

(2) The period of parole prescribed in subsection (1) shall be reckoned as part of the term of imprisonment.

A Parole Order is an order made by the Parole Board, not the Pardons Board, to a convict releasing the said convict to serve any part of his or her sentence of imprisonment outside of prison with conditions, and that said convict is deemed to continue serving his or her sentence of imprisonment while being released on parole.

Section 46C (1)(c) of the Prison Act 1995 states:

(1) With a view to encouraging good conduct and industry and to facilitate reformatory treatment of a prisoner, a Parole Board shall have the following powers:

(c) to add or vary any conditions of a Parole Order.

The Parole Board has the power to set conditions when considering an application by a prisoner to be released on parole. One of these conditions is the place where the prisoner is to be released to. There may be other conditions imposed as well by the Parole Board (not to be confused with the Pardons Board). The Pardons Board for each State is constituted pursuant to Article 42(5) of the Federal Constitution whereas the Pardons Board for the Federal Territories of Kuala Lumpur, Labuan and Putrajaya is constituted pursuant to Article 42(11) of the Federal Constitution.

The Parole Board, on the other hand, is established through section 46B(1) of the Prison Act 1995 which states as follows:

(1) There shall be established such number of Parole Boards to exercise all powers, discharge all duties and perform all functions as may be provided under this Act.

CONCLUSION

To conclude, as it stands, there are no laws that define or refer to the term 'house arrest' in Malaysia. However, there are laws, as we have seen, that provide for the serving of imprisonment sentence outside of prison. Currently, the only method for one to serve imprisonment sentence outside of prison, is through a Parole Order made by the Parole Board.