

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

CA Application No: **CA (PHC) APN: 97/12**

High Court Embilipitiya Case No: HC 53/2006

High Court: Embilipitiya Case No: BA 44/12

1. Madinge Nandawathi
Dimuthu Niwasa,
Gaminipura,
Thanamalwila.

PETITIONER

Vs.

1. Officer in Charge
Police Station
Embilipitiya.
2. The Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

K.W.Chandrasekera Alias Kiri Putha

2ND ACCUSED

C.A. (PHC)APN No.97/2012 -H.C.Embilipitya No.H.C.E. 53/2006
H.C. Embilipitiya No.H.C.E. BA 44/2012

Before : **Rohini Marasinghe, J.**
Deepali Wijesundera, J.

Counsel : Ranjith Heellage for the Petitioner.
Anoop de Silva SC for the Respondents.

Argued &

Decided on : 18.12.2012

Rohini Marasinghe, J.

The accused-appellant was the 2nd accused in the case bearing No. HCE BA 44/2012. The 1st accused was charge for being in possession of 254.5 Kg of Cannabis Sataiva EI under section No. 54A (C) of No. 13 of 1984 Poison, Opium and Dangerous Drugs (amended)Act . The appellant was indicted on count 2 for aiding and abetting the 1st accused. At the biginging of the trial, the 1st accused had pleaded guilty. Pursuant to the conviction he was imposed a fine of Rs. 25,000/-. The appellant had pleaded not guilty and opted to be tried. At the end of the trial appellant was convicted and sentenced to 5 years rigorous imprisonment.

Counsel for the appellant criticized this sentence on the basis that the learned trial Judge had given the appellant the maximum sentence under this statute only because the appellant

had not pleaded guilty. The appellant had no previous conviction. There was also truth in the statement of counsel for the appellant when he pointed out that there were no aggregative circumstances against the appellant to receive the maximum sentence, specially when the 1st accused who had committed the offence had received only a fine. We concede that the sentencing is a matter within the discretion of the trial judge. Therefore, we consider only whether there are sufficient ground to release the accused pending the appeal. Therefore, taking into consideration the submission made by the counsel for the petitioner we are of the view that the accused should be granted bail pending his appeal. The accused-appellant is being released on bail pending his appeal, he is directed to be released on the same bail furnished earlier.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

mds/-