

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

In the matter of an application for Revision  
made in terms of Article 138 read with  
Article 154P of the Constitution

Walimuni Jeewanie Silva

Jayapaya, Kuda Payagala,  
Payagala

**Petitioner**

**C.A.(PHC)APN NO.141/2012**

**Kegalle HCBA No.4415/12**

**HC Case No.3080/2011**

**Vs.**

1. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.
2. Officer-in-Charge  
Police Station,  
Rambukkana

**Respondents**

Solanga Arachchige Lasantha Pradeep  
Kumara,

Sagara Mawatha, Kuda Payagala

Payagala.

(and 2 others)

(presently at Remand Prison)

**Accused-Appellant**

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In the matter of an application for Revision  
made in terms of Article 138 read with  
Article 154P of the Constitution.

Attanayake Mudiyansele Koine Menika,  
Udahenpola, Poholiyadda

**Petitioner**

**C.A.(PHC)APN NO.142/2012**

**Kegalle HCBA No.4413/12**

**HC Case No.3080/2011**

Vs

1. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.
2. Officer-in-Charge  
Police Station,  
Rambukkana

**Respondents**

Banuna Arachchilage Sarath  
Jayasuriya  
Kotagama, Rambukkana

(And two others)  
(Presently at Remand Prison)

**Accused-Appellant**

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In the matter of an application for Revision  
made in terms of Article 138 read with  
Article 154P of the Constitution.

Gamaralalage Samanthika  
Udayanganie Appallagoda,  
Palugama, Undugoda

**Petitioner**

**C.A.(PHC)APN NO.143/2012**

**Kegalle HCBA No.4412/12**

**HC Case No.3080/2011**

**Vs.**

1. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.
2. Officer-in-Charge  
Police Station,  
Rambukkana

**Respondents**

**And**

Ganegoda Gederea Malaka Mihira  
Bandara  
Kotagama, Rambukkana  
(And others)

(Presently at Remand Prison)

**Accused-Appellant**

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**BEFORE** : **A.W.A.SALAM, J. &**  
**SUNIL RAJAPAKSHA, J.**

**COUNSEL** : Jagath Abeynayake for the petitioner.  
Anoopa de Silva S.C for the respondents

**ARGUED ON** : 15.03.2013

**DECIDED ON** : **19<sup>th</sup> March, 2013**

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**A.W.A.SALAM, J.**

These are applications filed in revision against the order dated 26 September 2012 of the learned High Court judge of Kagalle refusing the application for bail pending appeal. All three applications though filed separately, were taken up for argument in amalgamation. In PHC APN 141/2012 the accused was an assistant curator, and in PHC APN 142/2012 and PHC APN 143/2012 the accused were mahouts attached to the Department of Zoological Gardens. They were indicted in

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connection with the death of an elephant in case No 3082/2012 in the High Court of Kagalle. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused were indicted in the said case for causing physical injury to the elephant in question, an offence punishable under Section 20 of Fauna and Flora Protection Act No 44 of 1964 as amended by Act No 22 of 2009 read together with section 32 of the Penal Code. The 4<sup>th</sup> accused in the same case stood charged under section 102 of the Penal Code for aiding and abetting the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused in the commission of the said offence. The accused were found guilty of the charges, after trial the learned High Court judge imposed a jail term of one year on each of the accused and a fine of Rs.100,000/- and in default of payment of the said fine for another period of 3 months imprisonment.

The accused had been sentenced as aforesaid, on 18 June 2012. The appeals preferred by the accused against the said conviction and sentence are presently pending in this court. In the meantime the accused had made three different applications for bail pending appeal. The said applications for bail have been refused by the learned High Court judge, on 26 September 2012.

Being aggrieved by the said order of the learned High Court Judge refusing bail pending appeal, the present applications for revision have been made by applications dated 8 October 2012. On behalf of the three petitioners, it was strenuously urged that the learned High Court Judge has erred in law in refusing to enlarge the accused on bail, in that she has failed to evaluate the grounds urged by the petitioners' for bail

has failed to evaluate the grounds urged by the petitioners' for bail pending appeal. Further, it was urged that the learned High Court judge had misdirected herself when she considered the fact that the accused were sentenced only to half of the prescribed maximum sentence, thus implying that the punishment meted out to the accused imposing half of the prescribed sentence, is a disqualification to be on bail pending appeal. The relevant passage from the impugned order to this effect is reproduced below in it's original form.

මෙම අධිකරණය හමුවේ දඬුවම් ලබා දී ඇත්තේ එක් අවරුදු සිර දඬුවමකි. එකී සිර දඬුවම නියමිත සිර දඬුවමෙන් හරි අඩක්වේ.

As far as the impugned order is concerned, it appears that she has treated the offence committed by the accused as being of serious nature and the failure on the part of the accused to adduce exceptional circumstances. It is to be noted that in so much as the custodial sentence imposed on the accused is concerned, even if they serve the full term without preferring an appeal against the conviction and sentence, they should be able to secure their release from the prisons by 17 June 2013, if not released on a date earlier, as it usually happens. It is significant to note that as at the date of the learned High Court judge refused the application for bail the accused had been in remand, after conviction for a period of almost 3 1/2 months.

Even though it is not relevant to the order made by the learned High Court judge, as at today the accused have been on remand for a period of

exactly 9 months. As has been clearly laid down in the case of Ramu Thamodarampillai Vs Attorney General (SC application 141/75) by the Supreme Court the nature of the sentence imposed on the accused is quite relevant in deciding the question relating to the bail pending appeal. As has been emphasised by the Supreme Court in that case the requirement of exceptional circumstances should not be mechanically insisted upon merely because the conviction proceeds from the High Court. The reason is that it is not impossible for a person to be convicted by the High Court for a trivial offence and deal with him ultimately in a lenient manner. It is to be observed that if another application is to be made to the High Court for bail pending appeal, by the time the second and subsequent application is finally disposed of, the accused would have completed a period of one year or more in the remand prison.

Besides, the accused had been given a custodial sentence of one year which is equivalent to one half of the maximum jail term prescribed for that offence. This demonstrates that the offence has been treated by the High Court Judge as non-serious in nature. The fact that the accused had been on remand for at least one fourth of the actual period of jail term imposed on them i.e 3 months, needs to be considered as being favourable to the accused. In the circumstances, I am of the view that the order of refusal to allow the accused to stand on bail pending appeal, cries out for timely intervention of this court, by way of revision.

Hence, I set aside the impugned order and substitute the same with a

direction to release the accused in all three applications, pending the determination of their appeal on surety bail in a sum of Rs.200,000/- each with two sureties who should be related to the accused by blood or one of them should be the spouse of the accused.

JUDGE OF THE COURT OF APPEAL

**SUNIL RAJAPAKSHA,J.**

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/-