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

C.A(PHC) Application No. 58/201
H.C.Ratnapura BA 31/2007
M.C.Ratnapura No.B 1530/2005

Wellivita Arachchige Chandrika
Jayathunga,
265/1, Webada South,
Webada.

PETITIONER

On behalf of

Arumagamage Sugath Chandana
Kirindegedera,
Palamkada, Mulkirigala
(Presently in Remand Prison)

SUSPECT APPELLANT

Vs

Hon Attorney General
Officer in Charge, Police Station,
Nivithigala

RESPONDENT-RESPONDENTS

Before : A. W. A. Salam J
Sunil Rajapakse J.,
Counsel: Dr. Ranjith Fernando with Samanthi Rajapakse for the Petitioner. Samadasi Piyasena, State Counsel for the Respondents
Aruged on: 26.07.2013
Decided on: 03.09.2013

Sunil Rajapakse J.,

This revision application has been filed by the petitioner in respect of the order of the learned High Court Judge of Ratnapura dated 14.09.2013, cancelling the subsisting bail order, granted to the suspect appellant. Having cancelled the subsisting bail order, the learned High Court Judge re-committed the he suspect appellant to the remand custody. The instant revision application is aimed at challenging the propriety of the said cancellation of bail resulting in the re-remanding of the suspect appellant.

The suspect appellant was arrested by Police for allegedly being involved in the commission of certain offences committed under Sections 296, 316 and 380 of the Penal Code and was produced before the learned Magistrate of Ratnapura. The High Court Judge of Ratnapura enlarged him on bail on 10.05.2007 on conditions that he keeps cash bail in a sum of Rs. 2500/- personal bail to the value of Rs 100,000/- to appear in court and reports to Beliatta Police on the last Sunday of every month.

Almost after 4 ½ years after the release on bail, the suspect appellant filed a motion to have one of the conditions of bail, to wit: the duty to report to Beliatta police station, varied and relaxed. Upon such motion being filed, the learned High Court Judge called for a report from the Beliatta Police. The Police thereupon intimated to court that the suspect appellant had never reported to the Police after he had been enlarged on bail. Thereafter, purportedly acting under Section 14 of the Bail Act, the

learned High Court Judge cancelled the bail granted to the suspect appellant and re-remanded him for allegedly violating one of the conditions of bail, namely for failing to report to the police.

When the matter was taken up for argument the learned counsel for the petitioner contended that the Bail Act contains no provisions to cancel the bail and remand a suspect if he fails to report to the police. Without prejudice to the above argument the he further submitted that the suspect was unable to report to the Police station as directed by the High Court Judge due to the reasonable fear for his life and safety as he was concerned *inter alia* in the commission of murder of a police officer and that several other suspects in the case had come by their death in a mysterious manner.

He invited us to consider the undisputed fact that the suspect appellant had however appeared in Court on every day that he was directed to appear, throughout a considerable length of time and to be precise over a span of more than four and a half years. The learned High Court Judge having rejected the explanation offered, proceeded to cancel the bail granted which culminated in the suspect having to be re-remanded.

The State Counsel appearing for the Respondents made a strenuous attempt to convince us that the suspect appellant is not entitled to be granted relief. His position was that the suspect had violated the bail conditions imposed and absconded for a period of four and a half years. Her contention was that there is a greater likelihood of the suspect appellant absconding once again in future. Further the learned State

Counsel argued that there is strong and cogent evidence against the suspect appellant that he would not appear in court to stand his trial.

The purpose of refusing bail or cancelling a subsisting bail order *inter alia* is to protect the community, reduce the likelihood of further offending and to ensure that the suspect attends court throughout the trial and makes himself available to be sentenced. As stated in the case of Jayawickrama Subasinghe Arachchilage Ariyapala, CA (PHC)APN No: 134/12 "The concept of bail is the recognition of the liberty of a person between the time of his arrest and verdict subject to the condition that he re-appears in Court for his trial until its conclusion or until he is sentenced. The Court is entitled to cancel a bail bond (after hearing the accused) for violating the bail conditions and it includes specific grounds such as having threatened or influenced or tampered with evidence or interfered with the investigation or obstructed the judicial process or otherwise misused or abused the grant of bail".

The provisions relating to the remanding of the suspects concerning in the commission of an offence, being a restriction imposed on the liberty of the subject as guaranteed under the Constitution of the Democratic Republic of Sri Lanka should be interpreted strictly in accordance with the letter of the Law. In terms of Article 13(2) of the Constitution every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to the procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and

in terms of the order of such judge made **in accordance with the procedure established by law.** [Emphasis is mine].

As far as the present law relating to cancellation of bail is concerned, the procedure and the substantive law are embodied in the Bail Act. The disqualifications to enjoy the freedom of liberty conferred by a bail order, are contained in Section 14 of the Bail Act. On a perusal of the impugned order it appears that the bail granted to the suspect appellant has been cancelled solely on the ground of his failure to report to Beliatta police station. In my opinion the failure of the suspect appellant to report to the police station by itself, does not automatically fall within the disqualifications warranting such a cancellation of his bail as envisaged in the Bail Act.

The circumstances under which a subsisting order for bail may be cancelled are dealt under section 14. For purpose of ready reference section 14 of the Bail Act No 30 of 1997 is reproduced below. It reads as follows....

> 14. (1) Notwithstanding anything to the contrary in the preceding provisions of this Act, whenever a person suspected or accused of being concerned in committing or having committed a bailable or non-bailable offence, appears, is brought before or surrenders to the court having jurisdiction, the court may refuse to release such person on bail or **upon application being made in that behalf by a**

police officer, and after issuing notice on the person concerned and hearing him personally or through his attorney-at-law, cancel a subsisting order releasing such person on bail if the court has reason to believe :"

(a) that such person would "

(i) not appear to stand his inquiry or trial;

(ii) interfere with the witnesses or the evidence against him or otherwise obstruct the course of justice; or

(iii) commit an offence while on bail;

(b) that the particular gravity of, and public reaction to, the alleged offence may give rise to public disquiet. (Emphasis added)

(2) Where under subsection (1), a court .....cancels a subsisting order releasing such person on bail, the court may order such suspect or accused to be committed to custody.

(3) The court may at any time, where it is satisfied that there has been a change in the circumstances pertaining to the case, rescind or vary any order made by it under subsection (1)".

The main contention of the learned Counsel for the Petitioner is that there is no provision in the Bail Act to cancel the bail and commit an accused/suspect to the remand custody by reason of the failure to report to the police. To buttress his argument he relied on the judgment of Anuruddha Ratwatte and others vs Attorney General – 2003 Volume 2 –

Sri Lanka Law Report page 50. In that Judgment His Lordship Sarath N Silva, C.J., elaborating the principles relating to cancellation of bail stated that *"In terms of mandatory requirements of Section 14(1) such a cancellation could have been made only on ;*

i) An application being made by a Police Officer;

ii) Hearing the accused appellant personally or through his Attorney at Law;

iii) If the court had reason to believe that any one of the grounds as specified in paragraph (a) (i) to (iii) or paragraph (b) have been made out;

As has been pointed out in the case of Anuruddha Ratwatta (supra) "The Bail Act, No.30 of 1997 was passed by Parliament as stated in the long title to "provide for release on bail of persons suspected or accused of being concerned in committing or of having committed an offence.,.." A person is considered as being suspected of having committed an offence at the stage of investigation and he would be considered as an accused after he is brought before a court on the basis of a specific charge that he committed a particular offence. He would remain an accused until the trial is concluded and a verdict of guilty or not guilty is entered or he is discharged from the proceedings. Thus the provisions of the Bail Act would apply in respect of all stages of the criminal investigation and trial".

Accordingly, it is a condition precedent to cancel a subsisting bail order, an application has to be made by the police. In the instant matter no

such application has been made by the police. The order culminating in the cancellation of bail had been entered upon the suspect appellant having filed a motion to have one such condition relaxed or varied.

It is a well established principle of law that before making an order cancelling a subsisting bail order the Court must satisfy itself that it has reasons to believe that the suspected person would act in a manner specified in Section14(1)(a) (i) to (iii) (b) of the Bail Act. The facts relating to the present application clearly demonstrate that the failure to report to the police by the suspect concerned does not warrant such an inference that he would **not appear to stand his inquiry or trial, interfere with the witnesses or the evidence against him or otherwise obstruct the course of justice, commit an offence while on bail or that the particular gravity of, and public reaction to, the alleged offence may give rise to public disquiet. [Emphasis is mine]**

In the absence of such a decision being made or an inference to that effect is capable of being drawn by the conduct of the accused, a cancellation of the bail does not operate as an automatic punitive consequence.

Quite strikingly, the suspect appellant appeared before Court on each and every day the case was mentioned for a particular step or trial. There is no warrant of arrest issued against the suspect appellant at any time for nonappearance. The learned State Counsel while addressing Court did not deny this position. Therefore, I am of the view that the failure of the suspect appellant to report to the police does not give rise to the

inference that he would fall under the disqualification to continue to stand on bail under Section 14 of the Bail Act.

Further, I hold that court has no reasons to believe that the suspect would act in a manner as specified in Section14(1) (a)(i) to (iii) and (b) of the Bail Act. The learned High Court Judge has failed to evaluate the submissions urged by the suspect in this regard.

If the suspect appellant wanted to avoid court he could have easily defaulted himself from appearing in Court over a period of 4 ½ years. The main question that needs to be answered here is what made the suspect to attend Court and refrain from reporting to the police station. Invariably, the answer to this question is found in the explanation offered by the suspect appellant. The suspect appellant is said to be concerned in the commission of an offence relating to the murder of a police officer, robbery etc. Several other suspects involved in the said crime have been killed in a mysterious manner. This appears to be the reason that influenced the suspect appellant to refrain from reporting at the police station. The learned High Court Judge ought not to have taken the failure of the suspect to report at the police station as a default contributing to an inference that he would not appear to stand his inquiry or trial, interfere with the witnesses or the evidence against him or otherwise obstruct the course of justice or commit an offence while on bail.

Acting in revision, I set aside the impugned order of the learned High Court Judge dated 14.09.2012 and direct that the suspect appellant be allowed to continue to be on the same bail as imposed by the learned

High Court Judge on 10.05.2007. Accordingly, the bail granted to the suspect appellant should deem to have been never cancelled.

Further, The learned High Court Judge is directed to relax totally the condition of having to report to the police station. In passing I observe that Judges of the original Court empowered to grant bail should be very slow to impose a condition on the suspects to report to a police station at different intervals, as the police department plays an important role in prosecuting the case against the suspect and when they are directed to report to the police, obviously they come in contact with the prosecution witnesses and there is a possibility however negligent the chances may be for an unscrupulous police officer to abuse his authority and take the mean advantage of the helpless and desperate plight of an accused. In those circumstances the suspect is brought under severe hardship in having to attend the police station pending the conclusion of the trial. Hence, an imposition of a condition to report to the police station should not be made as matter of course unless the circumstances really cry out for such a condition. In the event of constant surveillance of the suspect is necessary, it would be more appropriate to order the suspect to report to the Registrar of a court of the choice of the Judge who make such an order or any other officer of court nominated by court or to other person or authority not involved in conduct of the prosecution or defence in the case. This would facilitate the elimination of corruption and abuse of authority that may take place in the suspects having to report to the police stations. Further, such an arrangement will undoubtedly give

meaningful effect to the presumption of innocence guaranteed under the constitution.

For reasons stated above, I allow the revision application and direct the Judge of the High Court to release the suspect appellant forthwith on the existing bail condition after revoking the condition to report to the police station.

The Registrar of this Court is directed to forward a copy of this Order to the Registrar, High Court of Ratnapura.

Judge of the Court of Appeal

A.W.A.Salam, J.

I agree.

Judge of the Court of Appeal.

NR/-