

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

CA (PHC) APN 125/2013

HC Colombo Case No : H.C.B.A.784/2013

Thennahandi Chalani Anuruddhika Silva,
No. 415/134/A, Atambagahawatta, Uthuru Kadirana,
Demanhandiya.

Petitioner

Vs.

01.Officer-in-Charge
Maritime" Unit, Crime Investigations Department,
Colombo 12.

02. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

And Now Between

Thennahandi Chalani Anuruddhika Silva,
No. 415/134/A, Atambagahawatta, Uthuru
Kadirana, Demanhandiya.

Petitioner - Petitioner

Vs.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents-Respondents

Warnakulasooriya Tharanga Pushpashantha
Fernando

Suspect

(Presently at Remand prison)

C.A.(PHC)APN No. 125/2013

H.C.Colombo No. HCBA784/2013

M.C.Colombo No.B/3344/01/12

BEFORE : A.W.A.SALAM, J. (P/CA) &

SUNIL RAJAPAKSHE, J.

COUNSEL : Inoka Gamage for the petitioner.

Rajinda Jayaratne S.C. for the respondent.

ARGUED AND

DECIDED ON : 03rd June 2014.

A.W.A.SALAM, J. (P/CA)

Heard Counsel for the petitioner in support of the application and the learned State Counsel in opposition.

This is an application to revise the order of the learned High Court Judge of Colombo dated 08.08.2013. By the said order the suspect who had been reported to have committed or was concerned in the commission of an offence under section 45(c) of the Immigration and Emigration Act was refused to be enlarged on bail. When he was refused bail the suspect had been on remand for more than a year. Significantly, the minimum sentence, if found guilty under section 45(c) of the Immigration and Emigration Act is one year rigorous imprisonment and the maximum five years. It is to be observed that

there was proof of exceptional circumstance for the suspect to be released on bail as he had been in incarceration for more than one year which is the minimum custodial sentence that could be imposed on him. As at today, the suspect has been on remand for one year and eleven months which is equivalent to two fifth of the maximum custodial sentence that can be imposed on the suspect. This means that if an application to the High Court is made today, the learned High Court Judge will have no option but to release the suspect on bail, on the basis that he had been on remand for almost two years.

Therefore, to refer the matter back to the High Court to make an appropriate order would prolong the agony and involves waste of precious time of that Court and the suspect having to go through the inquiry once again. Learned Counsel for the suspect submitted that the suspect in this case lives in abject poverty which I understand that he cannot afford the luxury of having to go through another bail application in the High Court.

In the circumstances, we consider the fact of the suspect (Warnakulasuriya Tharanga Pushpashantha) being on remand for one year and eleven months as proof of exceptional circumstances and revise the order of the learned High Court Judge dated 08th August 2013 by granting cash bail in a sum of Rs. 10,000/= (Ten thousand Rupees) and a sum of

Rs.1,000,000/=(One Million Rupees) surety bail with six sureties from and among the family members of the suspect to be approved by the learned Magistrate. The suspect is directed to report to the Magistrate's Court of Negombo until 05.12.2014 on every Friday between 9.00a.m. and 2.00 p.m. After 05.12.2014 he is required to report to the Magistrate's Court of Negombo, in the same manner, on the last working day of every month. The Registrar of the Magistrate's Court is required to maintain a separate register for the suspect to report to that Court.

An additional copy of this order to be dispatched to the Magistrate of Negombo to give effect to the order permitting the accused to report to Court as laid down above.

PRESIDENT OF THE COURT OF APPEAL

SUNIL RAJAPAKSHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=