

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

**In the matter of an application for bail  
in terms of Section 404 of the Code of  
Criminal Procedure Act No. 15 of 1979.**

1. Mosess Rangajeewa Neomal,  
Inspector of Police,  
Narcotics Bureau,  
Colombo 01.
2. Director Narcotics Bureau,  
Police Head Quarters,  
Colombo 01.

**Complainants**

**C.A. APPLICATION NO.  
C.A.(PHC) (APN) 138/2014  
M.C. NEGOMBO CASE NO. B 1074/13  
HC NEGOMBO (WESTERN PROVINCE)  
BAIL APPLICATION  
NOS. 108/2014 AND 109/2014**

**V.**

1. Hurbert Cooper
2. B. Chamila Viraj Mendis
3. S.K. Austin
4. H.L.A. Dushyantha Priyadharshana
5. M.N. Mohamed Rameesh
6. P.H. Shayani Nithasha
7. P.H. Dulaj Tharanga
8. W.A. Dinush Dilhara Perera

**Suspects**

**AND NOW BETWEEN**

Bulathsinghalage Mallika,  
No. 44/8, Suvarna Place,  
Supercity – Eldeniya,  
Kadawatha.

**Petitioner.**

Vs.

1. Mosess Rangajeewa Neomal,  
Inspector of Police,  
Narcotics Bureau,  
Colombo 01.
2. The Director,  
Narcotics Bureau  
Police Head Quarters,  
Colombo 01.
3. Inspector General of Police,  
Police Head Quarters,  
Colombo 01.
4. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents.**

**BEFORE: W.M.M. Malinie Gunaratne, J. &**

**P.R. Walgama, J.**

**COUNSEL: Kalinga Indatissa, P.C. for the Petitioner**

**Himali Jayanetti, S.C. for the Respondent**

Argued on: 26/06/2015

Decided on: 12.08.2015

**Malinie Gunaratne, J.**

The 6<sup>th</sup> and 7<sup>th</sup> suspects in Magistrate's Court of Negombo Case No. B 1074/13 were arrested and produced before the Magistrate on 15/07/2014 and 15/02/2014 respectively by officers of the Narcotics Bureau.

As the suspects have been remanded two Bail Applications were filed in the High Court of Negombo bearing Nos. HCBA 108/2014 and HCBA 109/2014 respectively.

On the 17<sup>th</sup> of September 2014 the learned High Court Judge granted bail to the two suspects. The said Orders granting bail have been marked as Y 1 and Z 1 and tendered along with the Petition.

On the 19<sup>th</sup> of September 2014, two days after the said bail orders were made, the learned High Court Judge of Negombo, cancelled the said Orders granting bail. The said Orders were marked Y 2 and Z 2 and tendered along with the Petition. The present bail application has been filed in view of the aforesaid two Orders under Section 404 of the Code of Criminal Procedure.

After filing objections by the Respondent the case was fixed for inquiry. When the case was taken up for inquiry on 16/06/2015, the learned State Counsel, on behalf of the Respondent raised a preliminary objection with regard to the maintainability of this application. The learned State Counsel contended, according to the oral submissions made by the learned President's Counsel, that this application is not a Revision application nor an Appeal. This is not an application seeking original jurisdiction of this Court too. Hence the learned State Counsel's contention was that, according to the law there cannot be any other application available in a bail matter.

It was agreed by both parties to file written submissions on the question of the preliminary objection that related to maintainability of this application.

I will now consider the preliminary objection raised by the Respondent.

In the written submissions filed by the State Counsel in this Court it was contended that, this application cannot be maintained as an Original or an Appeal or Revision Application. Further it was contended, if this is an Original Application there cannot be any other application filed in any lower court prior to filing this application. It is relevant to note, in this matter that the Original Applications were filed in the High Court of Negombo. Hence the learned State Counsel's contention was that this application cannot be considered as an Original Application, since the power has been vested in the High Court in terms of Section 83(1) of the Poisons and Opium and Dangerous Drug Ordinance with regard to a person suspected or accused to release on bail of an offence under Section 54 A or Section 54 B. The learned State Counsel draws the attention of this Court, that according to the jurisdiction clause in this application it only mentions Section 404 of the Criminal Procedure Code and not any other relevant provision of Law. The learned State Counsel further contended, hence, the jurisdiction clause is bad in Law and this Petition cannot be maintained.

In the oral and written submissions of the learned President's Counsel for the Petitioner, it also has been conceded that the power under Section 404, to grant bail is not an original power but an appellate power, and that a pre-requisite of the exercise of such power, is the existence of an order of an original court. The learned President's Counsel relied on the following decided cases to support his case. *Rev. Singarayan vs. Attorney General* (2)

Sri Kantha Law Report 154, Nithyanathan vs. Attorney General (1983) 2 SLR 251 and Benwell vs. Attorney General (1988) 1 S.L.R. 1.

The Section 404 of the Code of Criminal Procedure Act reads as follows:

“The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive; and notwithstanding anything to the contrary in this Code or any other law, the Court of Appeal may in any case direct that any person in custody be admitted to bail or that the bail fixed by the High Court or Magistrate be reduced or increased, or that any person enlarged on bail by a Judge of the High Court or Magistrate to be remanded to custody”.

The learned State Counsel for the Respondent strenuously contended referring to the full bench decision of the Supreme Court, Attorney General vs. Thilanga Sumathipala, that Section 404 of the Code of Civil Procedure Act, confers only an appellate and revisionary jurisdiction in the Court of Appeal and it does not vest “original” jurisdiction.

It would be necessary and relevant to consider the manner in which this application had come before this Court. It is stated in the Petition the 6<sup>th</sup> suspect arrested on 15/07/2014 and the 7<sup>th</sup> suspect arrested on 15/02/2014 by officers of the Narcotics Bureau and produced in Magistrate’s Court, Negombo Case No. B 1074/13. The above suspects have been remanded and two Bail Applications were filed in the High Court of Negombo. On 17/09/2014 the learned High Court Judge granted bail to the suspects. Two days after the Bail Orders were made, on 19<sup>th</sup> September 2014, the learned

High Court Judge by his own motion suspended the orders granting bail. The current bail application has been filed in view of the two orders made by the learned High Court Judge. Accordingly, it is apparent and can identify this application as a bail refusal / cancel order made by the learned High Court Judge. However, it is stated in paragraph (23) of the Petition, “Being aggrieved by the aforesaid Orders dated 19/09/2014, marked as ‘Y 2’ and ‘Z 2’, the Petitioner begs to invoke the special jurisdiction conferred on Your Lordship’s Court by Section 404 of the Code of Criminal Procedure Act No. 15 of 1979”.

It is relevant to note that Section 404 of the Code of Criminal Procedure Act, vests only appellate and revisionary jurisdiction in the Court of Appeal and not vested any other special jurisdiction. In the judgment of Attorney General vs. Thilanga Sumathipala it is specifically stated that the Section 404 vests only appellate and revisionary powers in the Court of Appeal.

It is significant to note in this case that there is no application to consider those orders, in order to exercise appellate or revisionary jurisdiction, and to set aside the orders suspending bail by the learned High Court Judge. It is relevant to note in the Prayer of the Petition, as the relief, the Petitioner has sought only to grant bail to the suspects and not sought to revise or set aside the learned High Court Judge’s Orders. Therefore it is relevant to note even if this Court allows the application of the Petitioner, learned High Court Judge’s order would prevail.

In the written submissions filed in this Court by the Petitioner, it was contended that the judgment of Rev. Singarayan vs. Attorney General was delivered by a bench of three judges of this Court and is therefore binding

on this Court. It was held in that case “the power given to the Court of Appeal by Section 404 of the Code of Criminal Procedure Act is an appellate power and that a pre-requisite for its exercise is the existence of an order of an original court”.

I agree with the contention of the learned President’s Counsel. But the issue that has to be decided in this case is whether the Petitioner has invoked the appellate or revisionary jurisdiction in this Court filing this Petition and if the answer is not, would the Petitioner be entitled to maintain this case?

The power given to the Court of Appeal by Section 404 is an appellate power and that a pre-requisite for its exercise is the existence of an order of an original court whether it be the Magistrate’s Court or the High Court either allowing or refusing bail or fixing a sum of security which is reviewable by the Court of Appeal.

The decisions in *Rev. Singarayan Vs. Attorney General (Supra)*, *Nithyananda and Others vs. Attorney General (1983) 2 SLR 251 (Supra)* and *Benwell vs. the Attorney General (1988) 1 SLR 1* correctly reflects the nature of the jurisdiction vested in the Court of Appeal by Section 404, which is limited to appellate and revisionary jurisdiction.

Moreover, the full bench decision of the Supreme Court in *Attorney General vs. Thilanga Sumathipala*, it was specifically held that Section 404 of the Criminal Procedure Code Act, vests only appellate and revisionary jurisdiction in the Court of Appeal.

Therefore it is quite clear, that the Petitioner is not entitled to beg to invoke any other special jurisdiction.

In the above circumstances I am of the view, that this application is not a revision application, nor an appeal. It is not an original application too. Therefore, it is my considered view, that the Petitioner has not invoked the jurisdiction of this Court in a proper manner. Hence, the Petitioner is not entitled to proceed with this application.

For the reasons stated above I uphold the preliminary objection raised by the learned State Counsel and dismiss this application.

**JUDGE OF THE COURT OF APPEAL**

P.R. Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Application is dismissed.