

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

CA Application No. CA/MC-RV/01/16(Bail)

MC Vavuniya No.3963/2015

A.M. Darshi Nawaratna
No. 3a, Summit Flats,
Keppetipola Road,
Colombo 05.

Petitioner

Vs.

1. Officer in Charge
Special Investigations Unit,
Police Headquarters,
Colombo 1

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

Respondents

3. Udaya Kumara Dissanayake

10th Accused - Respondent

C.A. Application No. CA/MC/RV/01/16(Bail)

M.C. Vavuniya

No.3963/2015

BEFORE : M. M. A. GAFFOOR, J. &

K. K. WICKRAMASINGHE, J.

COUNSEL : Anuja Premaratna with Dhammika Jayanetti,
Nayana Disanayaka and Iromie Jayarathna for
the petitioner.

Nayana Seneviratne SSC for the respondent.

ARGUED AND

DECIDED ON : 27th June, 2016

M. M. A. GAFFOOR, J.

This is an application for bail filed by the petitioner in terms of Section 404 of the Code of Criminal Procedure Act seeking to revise the order made by the learned Magistrate of Vavunia with regard to considering the grant of bail with regard to the 10th accused who is accused of conspiracy to deface or destroy an antiquity an offence punishable under section 15B of the Antiquities Act read with Section 113b and 102 of the Penal Code and secondly for aiding and abating the said offence punishable under Section 15B of the Antiquities Act read with Section 102 of the Penal Code. He submits that conspiracy and aiding and abating following the Vander Poorten vs. Vander Poorten 47 NLR 89 is not an offence under the Antiquities Act but is a distinct offence that stands by itself. He also submits that the prosecution case is

almost over and there are two or three more official witnesses that have to be led. He further submits that the health condition of the accused is deteriorating and in proof of that he has filed medical certificates and the relevant documents. Considering the exceptional circumstances of this case and the health condition of the 10th accused-respondent, he moves that Court be pleased to enlarge him on bail.

Learned Senior State Counsel submits that the prosecution case is almost concluded and they have already led 8 witnesses. (witness Nos. 1,2,15,13,21,12,19 and 34) and seeking to lead two other witnesses i.e. witness 41 and 65. She further submits that considering the present position of prosecution case, State is not intended to object to this application for bail at this juncture if the court is satisfied of the exceptional circumstances.

Order

The petitioner has filed this application to release the 10th accused-respondent on bail who has been charged under Section 15B of the Antiquities Act read with Section 113b and 102 of the Penal Code and Section 15B of the Antiquities Act read with Section 102 of the Penal Code. The State Counsel also submits that the Attorney General has no objection to enlarge the accused-respondent on bail considering present position of this case. Considering the exceptional circumstances and the deteriorated health condition of the accused-respondent, we decide to enlarge the accused-respondent on bail on the following conditions.

1. Cash bail in a sum of Rs. 50,000/= with two sureties One million each acceptable to the learned Magistrate.

2. He is also directed to report to the Special Investigating Unit, Police Head Quarters on the last Sunday of every month between 9.00 a.m. to 12. 00 noon.
3. He is also strongly warned not to interfere with the prosecution witnesses until the final determination of the case.
4. He is also directed to hand over the passport to the Magistrate's Court, Vavunia forthwith.

Registrar is directed to communicate this order by telephone and telefax to the Magistrate's Court, Vavunia and to the Special Investigating Unit, Police Head Quarters at the expense of the petitioner.

Registrar is also directed to issue a certified copy of this order to the petitioner on payment of usual charges.

JUDGE OF THE COURT OF APPEAL

K. K. WICKRAMASINGHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=