

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

Haputhanthri Gamage Don Nilantha Dias
Kariyaewasam,

No.456, Gorakaduwa, Pelawatta.

(Presently in Kaluthara remand prison)

**Court of appeal case no.
CA/PHC/APN 35/2016**

Accused Petitioner

**H.C. Kaluthara case no.
500/05**

Vs.

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

Respondent.

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Senarath Jayawardana for the Accused Petitioner.

: Nayana Senavirathne SSC for the Respondent.

Argued on : 28.06.2016

Decided on : 07.10.2016

L.T.B. Dehideniya J.

This is a revision application from an order of the learned High Court Judge of Kaluthara. The facts of this application are briefly as follows.

The Accused Petitioner (the Petitioner) was indicted in the High Court of Kaluthara on a charge of criminal breach of trust punishable under section 388 of the Penal Code read with section 5(1) of the Offences Against Public Property Act No. 12 of 1982 as amended by Act No 76 of 1988 and Act No. 28 of 1999. Before the indictment was served, the Petitioner was released on bail and on the service of indictment; the learned High Court Judge again ordered bail. While the case was pending in the High Court, it was found that the two medical certificates tendered on behalf the Petitioner were forged documents. The learned High Court Judge inquired in to the medical certificates and it was established that they were forged documents. Thereafter he remanded the petitioner until the conclusion of the case. The petitioner was indicted under section 18 of the Judicature Act for committing Contempt of Court.

The Petitioner's application for bail in the High Court was refused. This revision application is from the said refusal.

Does the bail act apply to an accused person remanded under the Offences Against Public Property Act? The section 3(1) of the Bail reads thus;

3. (1) Nothing in this Act shall apply to any person accused or suspected of having committed, or convicted of, an offence under, the Prevention of Terrorism (Temporary Provisions) Act. No 48 of 1979, Regulations made under the Public Security Ordinance or any other written law which makes express provision in respect of the release on bail of persons accused or suspected of having committed, or convicted of, offences under such other written law

The Bail Act provides the general rules on releasing the persons on bail and the connected issues. The Legislature has not intended to interfere with the special laws where the release of the accused persons on bail was restricted. The application of the Bail Act was taken away

from certain laws. The laws which are excluded from the application of the Bail Act are "*written law which makes express provision in respect of the release on bail*". The Offences Against Public Property Act has express provisions in respect of the release on bail of persons accused or suspected of.

Section 8(1) of the Offences Against Public Property Act governs the granting of bail on persons committed or has been concerned in committing or is suspected to have committed offences punishable under the Act. The section reads;

8. (1) The provisions of the Code of Criminal Procedure Act, No. 15 of 1979, in relation to bail shall apply where any person surrenders himself or is produced on arrest on an allegation that he has committed or has been concerned in committing or is suspected to have committed; or to have been concerned in committing an offence under this Act:

Provided, however, that where a Gazetted officer not below the rank of Assistant Superintendent of Police certifies that the value of the subject-matter in respect of which the offence was committed, exceeds twenty five thousand rupees such person shall be kept on remand until the conclusion of the trial. It shall be competent for the court in exceptional circumstances to release such person on bail after recording reasons; therefore.

This section provides that the provisions in relation to bail in the Criminal Procedure Code shall apply to the Offences Against Public Property Act. The section 3(2) of the Bail Act says that "*Where there is a reference in any written law to a provision of the Criminal Procedure Code Act, No 15 of 1979 relating to bail, such reference shall be deemed, with effect from the date of commencement of this Act, to be a reference to the corresponding provision in this Act*" Accordingly the Bail Act

should be the applicable law. But the application of the Bail Act (Criminal Procedure Code) has been curtailed on offences where the value involved in the offence is over Rs. 25000/-. The Offences Against Public Property Act provided express provision in releasing a person on bail in such an offence; that is only on exceptional circumstances. Therefore if the value involved in the offence exceeds Rs. 25000/-, the Bail Act does not apply.

In the present case the Petitioner was on bail and he was re remanded not for violating any bail condition, but for tendering a forged medical certificate and misleading Court. Once the indictment is served on the accused, the High Court Judge can order bail to secure his presence in Court. Section 191 (d) of the Criminal Procedure Code provides that;

(d) subject to the provisions of section 403 direct the accused to execute a bond to appear in court for his trial or by warrant addressed to the superintendent of any prison authorize the detention of the accused pending his trial;

If the High Court Judge is of the opinion that the accused may not appear in Court for his trial, such person can be kept in remand. Under section 403 of the code, Judge of the High Court, at any stage of any inquiry or trial can in his discretion release on bail any person accused of any non-bailable offence. Likewise, if the accused is on bail and the Judge has reason to believe that he may not appear in Court to stand his trial, his bail can be canceled and remand him. The learned High Court Judge remanded the Petitioner not only because he has tendered two forged medical certificates but the Judge has observed the behavior of the Petitioner in the open court how he is trying to mislead the Court. The learned High Court Judge had very good reason to believe that the Petitioner may not appear in Court for his trial. Even the Petitioner does

not challenge the validity or legality of the order of the learned High Court Judge remanding him. His application is to release him on bail under section 16 of the Bail Act as he was in remand for more than one year.

The Petitioner in the present case, being indicted on a charge punishable under the Offences Against Public Property Act and the value involved is certified to be more than Rs. 25000/-, proviso to the section 8(1) of the Offences Against Public Property Act comes in to operation and the general procedure laid down in the Bail Act does not apply. Therefore he cannot ask to release him under section 16 of the Bail Act.

Under these circumstances, I hold that it is not necessary to interfere with the order of the learned High Court Judge.

The Petitioner being charged for an offence punishable under the Offences Against Public Property Act, I direct the learned High Court Judge to give priority to this case under section 09 of the said Act. I further direct the learned High Court Judge to fix the trial on an early date and to act under the proviso to section 263(1) of the Criminal Procedure Code and conclude the trial on day-to-day basis.

Accordingly, I dismiss this application subject to the said direction. I order no costs.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal