

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

In the matter of an application for  
Revision under Article 138 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.

**CA (PHC) APN : 140/2016  
High Court of Colombo  
Case No : HC 8377/16**

Hon. The Attorney General of the  
Democratic Socialist Republic of Sri Lanka

**Complainant**

**Vs.**

01. Tiran P.C. Alles
02. Anthony Emil Lakshmi Kanthan
03. Roshan Saliya Abesinghe Wickramasuriya
04. Jayantha Dias Samarasinghe

**Accused**

**And Now**

Tiran P.C. Alles  
(Currently at Welikada Remand Prison)

**Accused-Petitioner**

**Vs.**

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

**Complainant-Respondent**

**Before : H.C.J. Madawala , J  
&  
L.T.B. Dehideniya, J**

**Counsel : Romesh de Silva PC with Nalin Ladduwahetty PC, Sugath Caldera  
Instructed by M/S Paul Rathnayake Associates for the Accused-Petitioner**

**Mention on : 08/11/2016**

**H. C. J. Madawala , J**

When this application came up for support yesterday 07/11/2016 the Learned President Counsel appearing for the Petitioner moved for an interim order staying the order of the Hon. Learned High Court Judge dated 2/11/2016 remanding the Petitioner.

President Counsel Mr. Romesh de Silva submitted that the order of the Learned High Court Judge dated 2/11/2016 is palpably wrong and moved that an order suspending the order to remand be made with notice to the Respondent.

He contended that the property mentioned in the indictment does not come within the purview of Section 5(1) of the offences against Public Property Act No. 12 of 1982. He also argued that the Bail Act is a special legislation and is applicable in this instant. Therefore there is no necessity for the Petitioner to establish exceptional circumstances. The Reconstruction and Development Agency created by his Excellency the President by the document marked 2R3 been a government Agency utilizing public funds whether the property involving the indictment is public property or not is an arguable issue. Further the proviso to Section 8 of the Public

Property Act contains Special Provisions for releasing a person on Bail. Therefore whether the provision supersede the Bail Act is also in issue.

When considering the order we find that the Accused has been charged under offences punishable under Section 113 B, 102 and 386 of the Penal Code read with Section 5(1) of the offences against Public Property Act No. 12 of 1982.

When considering the order of the Learned High Court Judge we are of the view that the Learned High Court Judge has considered the property as public property and has acted under the proviso to section 8 of the Public Property Act where the remand is the rule and the Bail is the exception. The Learned High Court Judge has not given any other reasons for remanding. As the personal liberty of the Accused has been curtailed due to the order of the Learned High Court Judge when there is no objection by the prosecution and who has obtained time to consider the Medical Reports and the Supreme Court Judgment in the Fundamental Rights application as to whether it constitutes exceptional circumstances. The Medical Report marked X1- X5 have been considered by the Learned High Court Judge and has come to the conclusion that the Petitioner needs Medical treatment. The Learned High Court Judge directed the superintendent of prisons to take prompt action if the Accused Petitioner shows any signs of a heart disease. With all these facts, the Learned High Court Judge has remanded the Accused-Petitioner until the prosecution consider the documents. The arrest of the Accused-Petitioner has been prevented by the Supreme Court in the Fundamental rights application. Even though it is not binding on the Learned High Court Judge it should have been considered. The impugned order does not indicate that the Learned High Court Judge has considered the Supreme Court Judgment. The J.M.O.'s and the Cardiologist on the directions of the court have examined the Petitioner and have reported to court that the Accused-Petitioner needs treatment abroad in an earlier occasion.

For the reasons given above we issue an interim order suspending the order of the Learned High Court Judge dated 2/11/2016 remanding the Petitioner.

We further order the Superintendent of Welikada Prison Authorities to release the Petitioner from the remand custody and warn him to appear before the High Court of Colombo on 10/11/2016. Further we order that this order shall not be prejudicial to any subsequent order that has to be made by the Learned High Court Judge.

We issue notice on the Respondent returnable 22/11/2016.

**Judge of the Court of Appeal**

**L.T.D.Dehideniya, J**

**I agree.**

**Judge of the Court of Appeal**