

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

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

Prosecution

V.

Shiek Samsudeen Mohomad Naseer,
Presently at Negombo Prison

Accused

Court of Appeal Revision No.
CA (PHC) APN 38/2019

High Court Negombo (Retrial)
Case No. HC 65/2002

Court of Appeal No. CA 87/17
High Court Negombo No. HC
65/2002

AND THEN BETWEEN

Shiek Samsudeen Mohomad Naseer,
Presently at Negombo Prison

Accused-Appellant

V.

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

Prosecution Respondent

AND THEN BETWEEN

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

Prosecution

V.

Shiek Samsudeen Mohomad Naseer,
Presently at Negombo Prison
Accused

AND NOW BETWEEN

Shiek Samsudeen Mohomad Naseer,
Presently at Negombo Prison
Accused Petitioner

V.

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

BEFORE

: **K.K. WICKREMASINGHE, J**
K. PRIYANTHA FERNANDO, J

COUNSEL

: Shavindra Fernando PC with Ananada
Weerasinghe for the Accused Appellant.
R. Barry SSC for the A.G.

ARGUED ON

: 26.07.2019

DECIDED ON

: 01.08.2019

K. PRIYANTHA FERNANDO, J.

01. This is an Application filed by the Petitioner to get the order made by the learned High Court Judge of Negombo dated 05.04.2019, refusing bail to the Petitioner, revised.
02. Heard both counsel for the Petitioner as well as the Respondent.
03. The Petitioner had been originally charged in the High Court of Negombo under case No. HC 65/2002 for the offences under the Poisons, Opium and Dangerous Drugs Act. The quantity of the Dangerous drugs involved, had been 5605.3 grams. By their lordships order dated 19.12.2003, the Petitioner was enlarged on bail by the Court of Appeal in case No. CA (PHC) APN 55/2003.
04. After trial, the Petitioner was convicted and sentenced by the learned High Court Judge of Negombo, against which the Petitioner appealed to this court.
05. Court of Appeal in case No. CA 87/2017, set aside the above judgment of the learned High Court judge dated 30.03.2017, and sent the case back to the High court for retrial.
06. When the case was called in the High Court of Negombo on 05.04.2019, the Judgment of the Court of Appeal was read over to the Petitioner and fixed the case for trial on 23.07.2019. On the same day (05.04.2019), the learned High Court Judge refusing the application of the counsel for the Petitioner to release the Petitioner on bail, has remanded the Accused.
07. As submitted by the counsel for the Petitioner, it is pertinent to note that, when this court in case No. CA 87/2017, set aside the conviction of the learned High Court Judge dated 30.03.2017, their lordships had clearly stated that the learned High Court Judge may consider that the Appellant

was already enlarged on bail, on the order of the Court of Appeal, when this case is mentioned in the High Court.

08. The learned High Court Judge has given his reasons for refusing bail, where he stated that, the Petitioner has failed to submit exceptional circumstances to grant bail. Further he has stated that, he takes into consideration the quantity of the dangerous drugs involved and the prescribed punishment the Petitioner would get, if convicted.
09. However, we find that the learned High Court Judge has failed to consider that the Petitioner was already on bail ordered by this court, and the fact that the conviction was set aside and retrial has been ordered.
10. Although, in their lordships judgment dated 05.03.2019 of court of Appeal Case No. 87/2017 the learned High Court Judge was directed that he may consider that the Appellant was already enlarged on bail by this court, there is no mention in the order of the learned High Court Judge that he has taken that into consideration.
11. Considering that this court has already enlarged the Petitioner on bail and that the conviction had been set aside, we order that the Petitioner be enlarged on the same bail conditions imposed on him on 19.02.2003 in the Court of Appeal in case No. CA PHC APN 55/2003. However following additional bail conditions are ordered by this court.
 - Two additional sureties in a sum of Rupees Five Million (Rs. 5,000,000/=) each (surety bail), acceptable to the learned High Court Judge.
 - The Petitioner should not leave the island without the permission of the learned High Court Judge. His travel documents to be handed over to the High Court Registry (if it is not already handed over to the Court).

- This travel ban to be conveyed to the relevant immigration authorities by the High Court.
- Rest of the bail conditions imposed by this court on 19.12.2003 will remain unchanged.

Revision Application is allowed.

JUDGE OF THE COURT OF APPEAL

K.K. WICKREMASINGHE, J

I agree.

JUDGE OF THE COURT OF APPEAL