

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

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

Hon. Attorney General.

Attorney General's Department,
Colombo 12.

CA Application No: **CPA 70/2020**

Complainant.

High Court Puttalam Bail Pending
Application No: **BA 21/2020**

Vs.

Don Sidney Manikka Hettiarahichi.

High Court Puttalam Case No:

Accused.

HC 100/04

AND BETWEEN

Don Sidney Manikka Hettiarahichi.

Accused – Petitioner.

Vs.

Honourable Attorney General,
Attorney Generals' Department,
Colombo 12.

Respondent.

AND NOW BETWEEN

Don Sidney Manikka Hettiarahichi

Accused – Petitioner – Petitioner

Vs.

Honourable Attorney General.
Attorney Generals Department,
Colombo 12.

Respondent – Respondent.

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel –Shanaka Ranasinghe, PC with N. Mihindukulasuriya and

A.Ranasinghe for the Accused – Petitioner.

Chathurangi Mahwaduge, SC for the State.

Argued On – 22.06.2021

Decided On – 13.07.2021

MENAKA WIJESUNDERA J.

The instant application for revision has been filed to set aside the order dated 28.5.20 of the learned High Court Judge of Puttlam.

The petitioner had been indicted under the Offences against the Public Property Act nu 12 of 1982 for criminal misappropriation of funds belonging to the Peoples Bank while serving as a senior executive of the bank. Upon

Conclusion of the trial the petitioner had been found guilty and was sentenced to 10 years rigorous imprisonment with a fine and a default sentence.

Upon being convicted the petitioner filed an appeal and a bail application pending the appeal.

According to the provisions of the Offences against the Public Property act if an accused is convicted under the said act he or she can obtain bail only on exceptional circumstances.

The petitioner has filed the instant application for bail on the grounds that he is suffering from TRIPPLE VESSEL DESEAS which needs CORONARY BYPASS urgently.

In order to substantiate the position of the petitioner he has filed a medical report obtained from the Nawaloka Hospital but the learned High Court Judge has rejected the same.

The submissions made before this court by the counsel of the petitioner is that the learned High Court Judge has misdirected himself by rejecting the medical reports of the petitioner and the learned High Court judge has further misdirected himself by not considering the permanent disability of the petitioner caused by a motor traffic accident, therefore that is a ground which needs to be considered as exceptional to enlarge the petitioner on bail pending the appeal.

The position of the respondents is that there is no illegality or misdirection on the part of the learned High Court Judge and the grounds submitted by the petitioner are not exceptional.

Upon considering the submissions of both parties the petitioner has undergone a bypass surgery at the Cooperative Hospital in Galle and has been treated for post-operative care in the Karapitiya Hospital but due to the pandemic situation in the country he has been transferred to the prison hospital in Galle.

The legal basis this court must consider has been set out in the Code of Criminal Procedure Code act nu 15 of 1979 and the bail act and more so according to several decided cases in our legal history bail pending appeal is considered upon exceptional circumstances, but in the instant case the petitioner has been indicted and convicted under Offences against the Public Property act under which bail upon conviction can be considered only on exceptional conditions, it is so said in section 8(2) of the act. Thus it is abundantly clear in the act itself how bail should be granted.

In the Supreme Court judgment by her Ladyship Thilakawardena J it has been very clearly said that exceptional circumstances “only exist when the facts and circumstances of the case are such that they constrain or compel Court to the granting of bail...”

As very clearly put in the above case it is very obvious that exceptional circumstances has to be considered in each case according to the facts of each case, hence in the instant case the attention of this court is drawn to the report from the Consultant Cardio Surgeon at the hospital in which the petitioners Bypass surgery had been done, had stated that until the lapse of 90 days the petitioner should be in sterile conditions and care, and the surgery had been done on 23rd April , hence stipulated period is not yet over.

Therefore this court is of the opinion that the above recommendation of the Consultant Surgeon compels this Court to enlarge the suspect on bail.

Therefore the order dated 28.5.20 is hereby revised and set aside and the instant application for revision is allowed and the petitioner is enlarged on following conditions of bail,

- 1) A cash bail of Rs 100000/,
- 2) Two sureties to the value of Rs 500000/ each
- 3) The petitioner to report to the relevant police station on every last Sunday of each month.

The registrar of this Court is hereby directed to convey the instant order to the relevant High Court.

Judge of the Court of Appeal.

I agree.

Neil Iddawala.

Judge of the Court of Appeal.