

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

An application in Revision under and in terms of Article 138 of the Democratic Socialist Republic of Sri Lanka against the Order of the Learned High Court Judge of Ratnapura Dated 26/08/2020 refusing of enlarge the Accused on Bail pending Appeal under section 404 of the Code of Criminal Procedure Act No. 15 of 1979 read with Bail Act No. 30 of 1997.

Court of Appeal Revision
Application No.

CA/PHC/APN/137/2020

High Court Application No.
(Ratnapura)

HCR/ 108/09

Democratic Socialist Republic of
Sri Lanka.

Complainant

Vs.

Dr. Anura Liyanarachchi,

Currently at the Kuruwita Prison.,

Accused

AND BETWEEN

Dr. Anura Liynarachchi,

Currently at the Kuruwita Prison,

Accused – Petitioner

Vs.

Hon. Attorney General

Complainant – Respondent

AND NOW BETWEEN

Dr. Wedige Ashoka Priyanjani de
Silva.

No.625/1,R.E.T Junction

Udawalawe.

Petitioner

Vs.

Hon. Attorney General

Complainant – Respondent –

Respondent

Before – Menaka Wijesundera J.

Neil Iddawala J.

Counsel –Ronald Perera, PC with S. Anthony for the Petitioner.

C. Mahawaduge, SC for the state.

Argued on – 09.12.2021

Decided on – 17.12.2021

MENAKA WIJESUNDERA J.

The instant application has been filed to set aside the order dated 26th of August 2020 of the learned High Court Judge of Ratnapura.

In the instant application accused petitioner (hereinafter referred to as the accused) has been **indicted under section 365 of the Penal Code**.

Upon conclusion of the trial the accused has been found guilty and had been convicted for rigorous imprisonment of seven years along with a fine and a compensation to be paid to the victim.

Being aggrieved by the said judgment an appeal has been lodged and the said appeal is pending before another division of this bench. Upon lodging of an appeal a bail application has been lodged pending the appeal and the learned High Court Judge has rejected the same for lack of exceptional circumstances.

The **term exceptional** in bail pending appeal has been followed in our legal system. The idea of granting bail is to ensure that the accused would return to face the trial or appeal. Therefore Courts are careful enough to impose conditions which are suitable enough to achieve that purpose.

Currently the main piece of legislature governing bail is the **Bail Act No 30 of 1997** and prior to that the **Criminal Procedure Code**, unless an act has specifically provided for the same. In the Bail Act the relevant section is **section 20(2) and 20(3) and in the Criminal Procedure Code it is section 333(3)**. Both these sections if one may go through does not say that there needs to be exceptional circumstances, but our Court from time immemorial has insisted for the same, which could be for the simple reason that it is widely believed and followed that an accused person who has been convicted by a Court of Law is more likely to abscond than a person who is facing a trial. If I may cite some of the said judgments they are as follows,

1) King vs. Keerala 48 NLR 202, which stated “this Court does not grant bail in the absence of exceptional circumstances”

2) Q vs. Caronolis Silva 74 NLR113 bail pending appeal had been refused in the absence of exceptional circumstances, and many others and one of the most followed cases being none other than Ramu Thamodarum Pillai vs. Attorney General 2004 3 SLR 180 which clearly said that exceptional vary from case to case and exceptionality does not by any means specify being married and having children as being exceptional. But it has considered the ill health of a convicted prisoner and had concluded that if the health conditions of the prisoner is aggravated by the incase ration ,and if it endangers his life it should be considered as exceptional ground to enlarge the convicted person on bail pending the appeal. It had also considered the severity of the sentence to be a very important factor.

In the instant application the exceptional ground urged by the **petitioner is his health condition** where he has suffered serious head injury from a fall in the Kuruvita prison. The accused had been treated in the Hospital of

Ratnapura and thereafter due the impact of the head injury the accused is supposed to be suffering from fits, decrease in the count of white blood cells and anemia. The medical report dated 11.6.2021 of the Prison hospital Colombo issued by Chief Medical officer Prison hospital has stated that the petitioner has suffered a fall from which he has incurred a traumatic brain injury which has resulted in acute sub arachnoids hemorrhage with brain contusion. This report had been substantiated by a report forwarded by Professor Ravindra Fernando in which he has further said that he needs constant care and treatment and that his life is in danger.

The counsel for the respondents did not challenge the medical reports of the petitioner but averred that the petition filed by the petitioner carries a defective prayer because it does not pray for any order to be revised.

The petitioner had replied saying that the body of the petition carries the said prayer.

But in the judgment of **Attorney General vs. Gunawardena 1996 2 SLR** it has been held that **“in exercising powers of revision this Court is not trammled by technical rules of pleadings and procedure. In doing so this Court has power to act whether it is set in motion by a party or not and even ex mere motu”**. **This judgment of the Supreme Court is a full bench judgment.**

Therefore as the body of the petition is very clear as to what order should be revised mere technicalities we choose to ignore if facts and the situation demands in the interests of justice.

In the case of **Attorney General vs. Ediriweera by her Ladyship Shirani Thilakawardene J** has stated that in a bail pending appeal **“exceptional**

conditions only exist when the facts and circumstances of the case are such that they constrain or impel the Court to the conclusion that justice can be done only by the granting of bail...”

In the instant matter there is ample material to come to the conclusion that the health condition of the petitioner compels this Court to conclude that his incarceration would endanger his life because the medical reports specify that he **needs constant care and management** which in the prison hospital is difficult and remote.

Hence as previously held by this bench in applications of bail pending appeal, if Court decided that in view of the **medical condition of the accused justice can be done only by granting bail** in the instant application too there is ample reason to conclude so.

As such the instant application for revision is allowed for the reasons mentioned above, and the order of the learned High Court Judge dated 26.8.2020 is set aside and this Court directs learned High Court Judge to enlarge the accused petitioner on suitable bail conditions.

Judge on the Court of Appeal.

I agree.

Neil Iddawala J.

Judge of the Court of Appeal.