

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

*In the matter of an application for revision  
in terms of Articles 138 and 154P of the  
Constitution read with the High Court of  
the Province (Special Provisions) Act No.  
19, of 1990 (as amended)*

The Commission to Investigate  
Allegations of Bribery and Corruption  
No 36, Malalasekera Mawatha,  
Colombo 07.

**Complainant**

**Vs.**

Court of Appeal Application  
No: **CA/ PHC/APN/76/21**

Dassanayake Mudiyansele Rohini  
Wasantha Kumarihamy

High Court of Colombo  
No: **HCB/2046/14**

**Accused**

**And now between**

Dassanayake Mudiyansele Rohini  
Wasantha Kumarihamy (presently at  
Welikada Prison)

**Accused – Petitioner**

**Vs.**

1. The Commission to Investigate  
Allegations of Bribery and Corruption.  
No 36, Malalasekera Mawatha,  
Colombo 07

**Complainant - Respondent**

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

**Respondent**

**BEFORE** : Menaka Wijesundera J  
Neil Iddawala J

**COUNSEL** : Jeevantha Jayathilaka with Thilanka  
Polgampala for the Petitioner  
Wasantha Perera, SSC with Priyangani  
Jayalath, ADA for the Respondents.

**Argued on** : 07.03.2022

**Decided on** : 05.04.2022

**Iddawala – J**

This is a revision application preferred against the High Court of Colombo order dated 24.11.2020 in Case No HCB/2046/14 wherein the learned High Court Judge refused to enlarge the petitioner on bail pending appeal. While the counsel for the respondent raised several objections, the counsel for the petitioner made submissions on a single legal issue. Hence, the ensuing determination will limit itself to the said legal issue.

The petitioner was the former Additional Educational Director attached to Nikaweratiya Educational Zone and was named the accused in the High Court of Colombo Case No HCB/2046/14. She was charged in terms of Section 20(b) read with 20(a) iv and Section 19 (c) of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994 (*hereinafter the CIABOC Act*). At the conclusion of the trial, the petitioner

was found guilty and sentenced to 20 years of Rigorous Imprisonment for all four charges, ordered to run concurrently, to be carried out in 10 years commencing from the date of sentencing: 22.01.2020 Aggrieved by the said conviction, the petitioner filed an application for appeal. Thereafter two applications for bail pending appeal were preferred. Both were refused. The petitioner has made the instant application to canvas the order of refusal delivered by the learned High Court Judge dated 24.11.2020. Aggrieved by such order, the petitioner has come before the Court of Appeal to invoke the Court's revisionary jurisdiction.

At the outset, it must be noted that the revisionary jurisdiction of this Court is a discretionary remedy available to a party who is dissatisfied with an order or judgment of a lower court due to the presence of some irregularity, illegality, absurdity in such order or judgment. Hence, the primary contention to be determined by this Court is whether or not the impugned order of the learned High Court Judge dated 24.11.2020 is in any way improper to warrant the interference of the Court of Appeal acting in revision.

A perusal of the impugned order reveals that the learned High Court Judge has correctly insisted on the burden of proving the existence of exceptional circumstances to grant bail to the petitioner. The impugned order examines three exceptional circumstances submitted by the petitioner: her medical condition, the plight of the 150 students enrolled in the petitioner's private school specializing in music and dancing occasioned by the petitioner's incarceration and the expected delay in concluding the application of appeal. The learned High Court Judge correctly dismissed all 3 grounds for want of exceptionality. The medical reports submitted as proof of her condition are dated between 2005 and 2014; the petitioner was sentenced in 2020. Even in the rare occasion a medical condition would be accepted as an exceptional circumstance, the outdated medical reports cannot in any way, be reliable. The party must prove the nexus between the said medical condition and the immediate danger it poses to

the person because of continued incarceration. i.e., the present danger to the person's life. Concerning the purported delay in the conclusion of the appeal, petitioner has failed to prove any excessive or oppressive delay. In the impugned order, the learned High Court Judge refers to a Journal Entry, which describes an instance where an attempt was made to subvert the due administration of justice, which was an additional element considered by the High Court in refusing to release the petitioner on bail.

Now that the impugned order has been examined, the submissions made by the counsel for the petitioner will be evaluated.

The counsel for the petitioner submitted that he would be raising a question of law that was not raised during the trial but will be taken up in appeal. The counsel sought to raise the same objection in the instant matter, stating that the issue of law amounts to an exceptional circumstance. He submitted that the nature of this question of law and its implications affect the very root of the prosecution instituted against the petitioner, thus amounting to an exceptional circumstance warranting the release of the petitioner on bail pending appeal. In the submission, the counsel for the petitioner referred to the 'precedent' set by **Anoma Polwatte v Jayawickrama Director General, Bribery Commission and Others** SC (writ) 01/2011 SC Minute dated 26.07.2018, **Nandasena Gotabhaya Rajapakse v CIABOC** CA (Revision) APN No 29/2018 CA Minute dated 12.09.2019 and another similar case. It was submitted that the legal issue thus raised points to patent illegality because there is a great likelihood that the petitioner would be acquitted in appeal and that the continued incarceration of the petitioner is unjustifiable. The petitioner contended that the respondent has failed to provide evidence of *'the certificate of 03 Commissioners of the Bribery Commission signing and authorizing the filing of this action which is now deemed to be an imperative prerequisite in respect of action instituted by the Bribery Commission'* (Vide Paragraph 16 of the Petition).

**Anoma Polwatte** Case (Supra) was occasioned by a case filed before the Magistrate Court under Section 78(1) of the Bribery Act whereby the Supreme Court was sitting in its writ jurisdiction determined on the application of Section 11 of the CIABOC Act. The Supreme Court quashed the charge sheet against the petitioner on the basis that a valid directive as per Section 11 of the CIABOC Act was absent. **Gotabaya Rajapakse** Case (Supra) concerned a revision application wherein the institution of proceedings under Section 78 of the Bribery Act was impugned. The judgment went on to discuss the nature of the ‘written sanction’ as envisaged by Section 78 of the Bribery Act. The Court of Appeal in **Gotabaya Rajapakse** Case (Supra) held that the existence of a ‘written sanction’ was a prerequisite to institute criminal action in the Magistrate Court under Section 78 of the Bribery Act and held that the Bribery Commission cannot independently institute criminal actions. The instant matter deals with a criminal action instituted in the High Court by way of an indictment under Section 11 of the CIABOC Act. The counsel for the petitioner failed to elaborate on how the determinations of **Anoma Polwatte** Case (Supra) and **Gotabaya Rajapakse** Case (Supra) affects the circumstances of the instant application where action has been instituted before the High Court as opposed to the Magistrate Court. (See **B. A. Ranjan Somasinghe v Director General, Commission to Investigate Allegations of Bribery or Corruption CPA 2/21 CA Minute dated 11.01.2022**). A mere citing of judgments will not entitle a party to benefit under the revisionary jurisdiction of the Court of Appeal when the burden placed on such party is to prove exceptional circumstances. The counsel for the petitioner failed to demonstrate the fundamental nexus between the determinations in the cited judgments, which dealt with cases instituted in the Magistrate Court and the instant application, which concerns an action filed in the High Court. The burden placed on the petitioner is to prove that the facts and circumstances of the application is of such exceptionality that it shocks the conscience of this Court. This, the petitioner failed to do.

In any event, as pronounced by a Divisional Bench of the Court of Appeal in **Ajahn Gardiye Punchihewa v Officer in Charge Financial Investigation Unit** III CA (Writ) Application No. WRT 311/2019 CA Minute dated 18.06.2020, which was later relied on by this Bench in **Director General, Commission to Investigate Allegations of Bribery or Corruption v W. A. Lalith Kumara** CA Application No. LTA/06/16 CA Minute Dated 23.02.2022, it is the considered view of this Court that the Court of Appeal sitting in revision cannot entertain the legal issue raised by the petitioner.

Bail refused.

Application dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Menaka Wijesundera J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**