

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

*In the matter of an application for bail under
and in terms of Section 15B of the Prevention
of Terrorism (Temporary Provisions) Act No 48
of 1979 as amended by Act, No. 12 of 2022.*

Husni M. Rizni
Attorney at Law,
56A, Sri Vishnu Kovil Road,
Dehiwala.

Petitioner

On behalf of

Buwaneswaran Rajeevan
Kachchai South,
Kodikamam.

Presently of,
Remand Prison,
Jaffna.

Suspect

Court of Appeal Application
No: **CA/BAL/20/2022**

Vs.

Magistrate's Court of
Chavakachcheri Case
No: **B/503/2020**

1. E.M.S. Edirisinghe
Chief Inspector of Police,
Officer in Charge,
Police Station,
Kodikamam.
2. Ujith M.P. Liyanage
Senior Superintendent of Police,
SSP's Office,
Jaffna.
3. Manoj Ranagala
Former Senior Superintendent of Police,
Jaffna.

4. C.D. Wickramaratne,
Inspector General of Police,
Police Headquarters,
Colombo 01.
5. The Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Menaka Wijesundera J.
Neil Iddawala J.

Counsel : N.M. Shaheid and Rushdhie Habeeb for the
Petitioner.
Ridma Kuruwita, SC for the Respondents.

Argued on : 29.09.2022

Decided on : 05.10.2022

Iddawala – J

This is an application for bail filed under Section 15B of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (hereinafter PTA), as amended by the Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 12 of 2022 (hereinafter Amendment Act, No. 12 of 2022) by the petitioner, on behalf of the suspect who is detained at the Remand Prison, Jaffna.

The facts of the case briefly are as follows. The suspect, Buwaneswaran Rajeevan who was an employee of the Sri Lanka Transport Board (SLTB) - Vavuniya was confronted at his residence by a team of Police officers headed by the 1st respondent on 18.10.2020. The 1st respondent proceeded to arrest him on the grounds that he was involved with the terrorist group 'Saava' or '007', and functioned as its leader.

The suspect was thereafter produced before the Magistrate's Court of Chavakachcheri under case No. B/503/2020 on 19.10.2020, and the 3rd respondent reported that the suspect was arrested on information received from the Criminal Investigation Department (CID) that he was the leader of the above-mentioned terrorist group. It was further stated that a sword used by the suspect for the purpose of stabbing a person, and a hand grenade were recovered from the goat-shed located behind the suspect's house. The suspect was also claimed to have had a photograph of the deceased leader of a proscribed terrorist organization on his mobile phone which he had uploaded on his Facebook profile (vide annexures 'X' and 'P2').

Thus, upon the 3rd respondent's request, the suspect was remanded in terms of Section 7(1) of the PTA until further advice is obtained from the Attorney-General. Furthermore, the alleged hand grenade and the mobile phone recovered from the suspect had been forwarded to the Government Analyst's Department, and their report has been received on 18.03.2021. However, despite nearly two years elapsing since the arrest of the suspect, and more than 18 months having passed since the Government Analyst's report has been received, no indictment has been filed and no trial has commenced against the suspect. In this connection, a clear Guideline to the investigation officers was set out by the Supreme Court in **Sukumar Vs Officer in Charge Joseph Army Camp, Vavuniya** (2003) 1 S.L.R. 399, where it opined,

“...until leave was granted in this application, no steps were taken to have the petitioner brought to trial, nor have steps been taken to ascertain whether the Attorney-General consents to the release of the petitioner from custody in terms of the proviso to section 7(i) of the Prevention of Terrorism Act.

In court's view, it is a necessary implication of that proviso that the authority responsible for the arrest or detention must inform the Attorney-General as soon as possible of the fact of such arrest and detention in order to enable the Attorney-General to review the matter and to determine whether he should be further detained in custody”.

The petitioner, on behalf of the suspect, states that he denies the said allegations that the suspect was involved in any terrorist group and also denies any weapons being recovered from his house, and further states that no such ‘goat shed’ exists behind his house. He further posits that the suspect was beaten and coerced into admitting this version of events by the respondents. The petitioner states that the suspect has been further aggrieved due to this long incarceration, with his young wife and daughter aged 3 years becoming destitute, and his employer (SLTB) informing him that he is considered to have vacated his post with effect from 19.10.2020.

Having thus set out the relevant facts of the case, this Court will now turn to the law. The applicable law is contained in Section 15B of the PTA, as amended by the Amendment Act, No. 12 of 2022. Section 15B stipulates the following:

“Notwithstanding anything to the contrary in the provisions of this Act, if the trial against a person remanded or detained under this Act has not commenced after the expiration of twelve months, from the date of arrest, the Court of Appeal may release

such person on bail, upon an application in that behalf, made by the suspect or an Attorney-at-Law on his behalf:

Provided however, notwithstanding the provisions of subsection (2) of section 15, the High Court may in exceptional circumstances release the suspect on bail subject to such conditions as the High Court may deem fit:

Provided further, where the trial against an accused in respect of whom the indictment has been forwarded and filed in the High Court, has not commenced after the expiration of twelve months from the date of such filing, the High Court may consider to release such person on bail, upon an application in that behalf made by the accused or an Attorney-at-Law on his behalf.”

The above Section explicitly recognizes three stages at which a person arrested under the PTA is rendered an opportunity to make a request to be admitted to bail to the appropriate court. If an applicant satisfies the ‘legislative prescription’ thus envisioned, he may be considered for release on bail under the PTA. As such, with the advent of the Amendment Act, No. 12 of 2022, bail under the PTA has undergone a significant transformation. At this point, it is pertinent to highlight, for the benefit of all, the legislative intent behind Amendment Act, No. 12 of 2022. As per the **Hansard, Volume 289 – No. 5, Column 788 dated 22.03.2022**, the then Minister of Foreign Affairs whilst introducing amendments to the PTA has stated as follows,

“[t]he provisions of the Prevention of Terrorism Act must be resorted to only in very exceptional circumstances. It cannot be the norm; it is not the rule; it is very much the exception. For example, just because a gun is found in somebody’s house, you cannot automatically invoke the provisions of the Prevention of Terrorism

Act. The gun may have been there in connection with some personal dispute or some commercial dispute..... in future, the normal provisions of the law, that is, investigations under the Criminal Procedure Code, should be accepted as a norm and it is only in very exceptional cases where there is manifest evidence indicative of some terrorism dimension that recourse to the Prevention of Terrorism Act will be justifiable.” (Emphasis added)

As detailed above, the suspect has been incarcerated for nearly two years and is yet to be served with an indictment, with no indication of the commencement of a trial. Hence, the petitioner has fulfilled the ‘legislative prescription’ envisioned by Section 15B of the PTA, introduced by Amendment Act, No. 12 of 2022. As such, this Court is vested with the discretion to consider the suspect’s bail application. At this juncture, it is pertinent to note that the State Counsel has not objected to the granting of bail to the suspect. In considering all the facts detailed above, it appears to this Court that the respondents have held the suspect in incarceration for a prolonged time under the PTA, without building up a rational basis and any prospect of a trial. The Court also notes the inordinate delay in the process of administering justice, and the aggrieved state of the suspect owing to such shortcomings.

Whilst the law does not construe the incarceration of a suspect pending investigation as amounting to punishment, it does indeed restrict the inherent rights and freedoms of the suspect, which are ensured by the Constitution. Hence, a suspect has the right to be brought to trial without unreasonable and inordinate delay, even in the context of a special circumstance envisioned under the PTA. If adequate material to justify the continued incarceration of a suspect is absent, such person must be discharged at the first available opportunity. As per Section 15B of the PTA, the legislature has

recognized a period of 12 months for the relevant authorities to carry out investigations and build a case for the prosecution of the suspect. And at the end of the 12-month period, if a case with a reasonable prospect of securing a conviction cannot be formulated, i.e., an indictment has not been forwarded, the law prescribes that such suspect may be considered to release on bail. It is the duty of the investigators to seek advice/instructions from the Attorney General's Department within the given a 12-month period, and expedite the investigation according to law.

It must also be noted that the delays in the process of administration of justice have been exacerbated by the relevant parties restricting themselves to archaic procedures and failing to update their processes with the technology available today. In the instant case for example, each day spent on physically sending records/reports from Jaffna to Colombo and vice versa, add yet another day of restricting the freedom of the suspect. Such delays could have been averted if modern technology was utilized to send and receive documents, in accordance with laws and regulations providing for electronic records. Therefore, the relevant parties are sounded a note of caution to utilize all means available to them to ensure an efficient and effective process of administration of justice.

In the instant case, the suspect has admitted that the said photograph was uploaded by him on his Social Media Account, yet denies he had any malicious intent therein. He also vehemently denies the purported recovery of a sword and a hand grenade from his residence. This Court notes the absence of any investigative material other than the IBE's detailing of the circumstances of the initial arrest, which, in the considered opinion of this Court, fails to provide justification for the continued incarceration of the suspect.

In view of the above, it is the considered view of this Court that the suspect be released on bail, subject to the bail conditions set out below.

Bail conditions

1. Cash Bail of Rs 20,000/-
2. Two sureties to the value of 50,000/- each, as acceptable to the Magistrate.
3. The suspect to report to the Police Station- Kodikamam on the 4th Sunday of every month between 9.00am – 3.00 pm.
4. Passport/Travel Document if any, to be surrendered to the Magistrate Court of Chavakachcheri.

Registrar of this Court is directed to send a copy of this order to the Magistrate Court of Chavakachcheri.

Bail granted.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL