

**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.*

M.J.F. Sumaiya
Attorney-at-Law,
Faris & Associates,
No. 120-1/1, Hulftsdorp Street,
Colombo 12.

Petitioner

Court of Appeal Application
No: **CA/BAL/42/2022**

Magistrate's Court of Colombo
No: **B/69002/08/2022**

Magistrate's Court of Gampola
No: **B/432/19**

On behalf of,

Mohamed Azhar Ahnan Ahamed
No. 182, Watadeniya,
Welamboda.

(Presently detained at Counter Terrorism
Investigation Division – Kirulapone).

Suspect

Vs.

1. Mr. Manjula
Sub Inspector of Police,
Police Station,
Welamboda.

2. Officer-in-Charge,
Police Station,
Welamboda.

3. Mr. Visidagama,
Sub Inspector of Police,

Counter-Terrorism & Investigation Division,
2nd Tower, No. 149,
Kirulapone Avenue, Colombo 05.

4. Officer-In-Charge
Counter-Terrorism & Investigation Division,
2nd Tower, No. 149,
Kirulapone Avenue, Colombo 05.

5. The Director
Counter-Terrorism & Investigation Division,
2nd Tower, No. 149,
Kirulapone Avenue, Colombo 05.

6. Inspector General of Police,
New Secretariat,
Police Head Quarters,
Colombo 01.

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

Respondents

Before : Menaka Wijesundera J
Neil Iddawala J

Counsel : Faris Saly with S.Dissanayake instructed by
Sumaiya Jiffry for the Petitioner
Nishanath Nagarathnam SC for the State

Argued on : 12.10.2022

Decided on : 31.10.2022

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 Counter Terrorism Investigation Division – Kirulapone.

The facts of the case briefly are as follows. The suspect, Mohamed Azhar Ahnan Ahamed, submitted to be a software engineer, was arrested at his residence on 30.04.2019 by a team of Police officers from the Welamboda Police headed by the 1st Respondent, allegedly without indicating the reason(s) for arrest. The suspect's personal effects i.e. laptops, mobiles, hard drives, pen drives etc. that were in his possession have also been taken into the custody of the Police. The petitioner submits that on the following day, i.e. 01.05.2019, the 1st and the 2nd respondents accompanied by a team of police officers, Special Task Force (STF) officers, and Scene of Crime Officers (SOCO), took the suspect for a search of a building under construction which belonged to his father. The 2nd Respondent has searched the premises and claimed to have discovered a homemade bomb made out of a light bulb, and some bullets unearthed from the toilet pit.

Thereafter, the suspect has been produced before the Magistrate's Court of Gampola under Case No. B/432/19 on 02.05.2019 under Section 9A (1) Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, as amended, and the provisions of the Penal Code, Explosives Act, No. 21 of 1956 and Offensive Weapons Act, No. 18 of 1966. In these proceedings the main charge against the suspect has been that he is connected with the Islamic National Thauheed Jamath Organization and aided and abetted terrorist activities.

The suspect has thereafter been transferred from the Welamboda Police to Pallekale Dumbara Remand Prison on the order of the learned Magistrate of Gampola on 22.07.2019. He has then been moved again from Pallekale to the Counter-Terrorism & Investigation Division (CTID), Kirulapone on 07.02.2022 to be detained for further investigations under the charge of the 3rd respondent. On 19.04.2022, the suspect has been produced before the Magistrate's Court of Colombo under Case No. B/69002/08/2022. The CTID has reported to the learned Magistrate that the suspect was *inter alia*, an activist of National Thauheed Jamath and aided and abetted the Easter Sunday bomb attacks, possessed 9 mm hand bullets, associated with people who were suspects for defacing Buddha statues, and attended lectures and weapons training by Mohamed Zaharan.

The petitioner states that despite the above allegations, suspect has been incarcerated for more than three years since he was arrested on 01.05.2019, and has been subjected to continuous investigations and interrogations, and has not been indicted in any High Court and no trial has commenced against him. Thus, the petitioner prays to have the suspect enlarged on bail under Section 15B of the PTA.

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.”

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.

As detailed above, the suspect has been incarcerated for nearly three 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 and make an order. 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.

As this Court stated in **Buwaneswaran Rajeevan Vs E.M.S. Edirisinghe O.I.C. Kodikamam Police Station** BAL-20-22 CA Minutes dated 05.10.2022 that “*Whereas 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*”. As the Supreme Court speaking through the then Chief Justice Sarath N. Silva held in **Anuruddha Ratwatte and Others v. The AG (2003) 2 Sri L.R. 39** (page 43-46): “*Every day spent in incarceration constitutes deprivation of personal liberty...The right to liberty and security of person is a basic tenet of our public law and is universally recognized as a human right guaranteed to every person (vide Article 9 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights). Based on this right to liberty and security of person, Article 13 of the Constitution guarantees as a fundamental right to every person, the freedom from arbitrary arrest, detention and punishment.*”

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. It is the considered opinion of this Court, that the investigating officers who have subjected the suspect to three years of incarceration and restriction of liberty without indicting or commencing a trial against the suspect, have failed to provide justification for the continued incarceration of the suspect.

In view of the above observations, 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 25,000/-
2. Two sureties to the value of 100,000/- each, as acceptable to the Magistrate Gampola.
3. The suspect to report to the Police Station- Welamboda 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 Gampola.

Registrar of this Court is directed to dispatch a copy of this order to the relevant Magistrate Court/s.

Bail granted.

JUDGE OF THE COURT OF APPEAL

Menaka Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL