

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

In the matter of an application for Bail in terms of Article 138 (1) of the Constitution to revise and or to set aside the impugned orders on Bail dated 23-11-2022 and 02-02-2023 pronounced by the learned High Court Judge of Colombo.

Court of Appeal No:

CPA/0022/23

Korale Gedara Gunathilaka

No. 71/9,

Laggala,

Pallegama.

(Presently at Remand Prison)

WITNESS-PETITIONER

High Court of Colombo

Case No. HCB 53/2020

Vs.

The Director General,

The Commission to Investigate Allegations
of Bribery or Corruption,

No. 36, Malalasekara Mw, Colombo 07.

RESPONDENT

Before : Sampath B. Abayakoon, J.
: P. Kumararatnam, J.

Counsel : U. R. De Silva, P.C. with H. Ruberu for the Petitioner
: Ganga Heiyanthuwa, Deputy Director General for
the Respondent

Argued on : 31-03-2023

Decided on : 03-04-2023

Sampath B. Abayakoon, J.

This is an application by the witness petitioner (hereinafter referred to as the petitioner) invoking the revisionary jurisdiction of this Court seeking bail for himself and to revise and set aside the orders made by the learned High Court Judge of Colombo dated 23-11-2022 and 02-02-2023, where his application for bail was refused.

The Director General of the Commission to Investigate Bribery or Corruption has filed an action in the High Court of Colombo against a person for committing four offences punishable in terms of section 19 (b) and 19 (c) of the Bribery Act.

The petitioner was the fourth witness named in the indictment. At the trial held in that regard, the petitioner has given his evidence before the High Court on 31-10-2022. On that day, on the basis that he is giving evidence detrimental to the prosecution, an application has been made to treat him as an adverse witness in terms of section 154 of the Evidence Ordinance, which has been allowed. Accordingly, he has been cross-examined by the prosecution. At the end of his evidence, the learned High Court Judge has ordered the remanding of the petitioner by making the following order.

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පැමිණිලිකාර පාර්ශවයේ සාක්ෂි අංක 4 බැලූ බැල්මට මෙම අධිකරණය ඉදිරියේ අසත්‍ය සාක්ෂි ලබා දී ඇති බවට පැහැදිලි වේ. එම කාරණාව 1994 අංක 19 දරන අල්ලස් හා දූෂණ චෝදනා සභා පනතේ 14 (1), (2), (3) වගන්තීන් ගේ ප්‍රතිපාදන යටතේ සාපේක්ෂව සැලකිල්ලට ගනිමි. ඒ අනුව අදාළ සාක්ෂිකරුට එරෙහිව මෙම නඩුවේ විභාගය අවසානයේදී අසත්‍ය සාක්ෂි ලබා දීම සම්බන්දයෙන් අධිචෝදනා පත්‍රයක් ඉදිරිපත් කිරීමට පියවර ගැනීමට අල්ලස් හෝ දූෂණ කොමිෂන් සභාවේ අදාළ නිලධාරී මහතාට දැනුම් දෙමි. සාක්ෂිකරු එතෙක් රිමාන්ඩ් භාරයට පත් කරමි."

It is clear from the above order, that the learned High Court Judge has remanded the petitioner for an indefinite period, until The Commission to Investigate Allegations of Bribery or Corruption (hereinafter referred to as the Bribery Commission) prefer an indictment against the petitioner, which would be an event that can happen only after the conclusion of the trial where the petitioner was supposed to have given false evidence. The next hearing date of the trial has been fixed for 02-02-2023.

An application has been made on 23-11-2022, seeking bail for the petitioner. The learned Counsel representing the Bribery Commission has made submissions to the effect that once a person is remanded in terms of section 14 of The Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 (The Act), such a person can be granted bail only by the Court of Appeal under exceptional circumstances.

The learned High Court Judge has accepted the argument and has held that he has no jurisdiction to grant bail in terms of section 14 (3) of the Act, and has refused the application for bail.

Another application for bail has been made when the case was taken up for further trial on 02-02-2023. When the 2nd application was made, the learned Counsel who represented the petitioner has brought to the notice of the Court,

the inappropriateness of keeping the petitioner under remand custody until the conclusion of the trial, indicating that it would be prejudicial towards the accused as well.

However, the learned High Court Judge has refused the 2nd application for bail on the basis that he has no jurisdiction to grant bail.

We heard the learned President's Counsel for the petitioner supporting his application before this Court. We heard the views expressed by the learned Counsel representing the Bribery Commission as well, in determining this application.

The section of the Act under which the learned High Court Judge has purportedly decided to remand the petitioner reads as follows.

14. (1) If in the course of a trial for an offence under the Bribery Act or Declaration of Assets and Liabilities Law No. 1 of 1975, any witness shall on any material point contradict either expressly or by necessary implication the statement previously given by him in the course of any investigation conducted by the Commission under this Act, it shall be lawful for the presiding Judge or Magistrate if he considers it safe just in all the circumstances to act upon such statement if such statement is corroborated in material particulars by evidence from an independent source ; and to have such witness at the conclusion of such trial tried before such court upon a charge, or if such court is the High Court, arraigned and tried on an indictment, for intentionally giving false evidence in a stage of a judicial proceeding.

(2) At any trial under subsection (1) it shall be sufficient to prove that the accused made the contradictory statements alleged in the indictment or charge and it shall not be necessary to prove which of such statements is false.

(3) The presiding Judge or Magistrate may, if he considers it expedient, adjourn the trial of any accused under subsection (1) for such period as he may think fit and in any such case the accused shall be remanded until the conclusion of such trial.

Provided that the Court of Appeal may in exceptional circumstances release such person on bail pending the conclusion of the trial.

It is the view of this Court that although this Court finds nothing wrong in the learned High Court Judge's direction that the petitioner should be indicted for giving false evidence, this Court finds no basis to agree with the order by the learned High Court Judge to remand the petitioner until that event happens.

It is clear from the plain reading of the section that the trial mentioned in subsection (2) is the trial where the person who has given false evidence has been charged and not the trial where the person has allegedly given false evidence.

Such a trial can take place only after the conclusion of the trial where such a person has allegedly given false evidence and after an indictment is filed against him in the High Court.

Similarly, the subsection (3) of section 14 where it says that a trial Judge can remand the accused until the conclusion of such trial refers to an accused in a trial where he has been charged or indicted for intentionally giving false evidence in a stage of a judicial proceeding.

It is the view of this Court that remanding of a person can only arise after a charge or an indictment is preferred against such a person and not before.

In terms of section 14 of the Act, the legislature in its wisdom has only described the offence under which a person who has given false evidence can be charged stating that the charge should be for intentionally giving false evidence in a stage

of a judicial proceeding. It has not given any penal provision for a person convicted of such a charge.

Therefore, it appears that the penal section under which a person can be charged is section 190 of the Penal Code, where if found guilty, such a person can be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to a fine.

It is the considered view of this Court that the learned High Court Judge was completely misdirected as to the relevant provisions of the law, when he remanded the petitioner at the conclusion of his evidence, until an indictment is filed against him. It is also the view of this Court that the learned Counsel for the Bribery Commission was also misdirected as to the relevant law when it was submitted that the petitioner could seek bail only before the Court of Appeal.

Such a submission can have substance only if the initial remand of the petitioner was in accordance with the law. Releasing a person remanded in terms of section 14 (3) under special circumstances by the Court of Appeal would arise only in the situation where an indictment or a charge has been preferred against such a person at the conclusion of the trial, where he is alleged to have given false evidence and not before.

Therefore, it is the considered view of this Court that remanding the petitioner on 31-10-2022 and the refusal by the learned High Court Judge to grant him bail on the basis that he has no jurisdiction to grant bail was not in accordance with the law. Moreover, it is the view of this Court that there was no basis for the learned High Court Judge to remand the petitioner in the first place.

Although this Court find merit in the submission made by the Counsel before the High Court when the petitioner sought bail for the second time, that keeping the petitioner in remand would be inappropriate and would have a bearing on the case of the accused in the main case, I find it not necessary consider it further as it has no relevance to the application under consideration.

Accordingly, the order dated 31-10-2022 where the petitioner was remanded, and the two subsequent orders dated 23-11-2022 and 02-02-2023, where the bail was refused to the petitioner are hereby set aside.

The learned High Court Judge of Colombo is directed to order the immediate release the petitioner from the remand custody. He is directed only to warn the petitioner to appear before the Court if and when an indictment is preferred against him before his release.

The Registrar of this Court is directed to communicate this judgement forthwith to the High Court of Colombo for necessary immediate compliance.

The Registrar is also directed to issue a copy of this judgement to the learned Counsel for the petitioner on necessary charges, and to the Bribery Commission.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal