

**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 Article 138(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 15(b) of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 12 of 2022.

Court of Appeal

Rizwan Uwais

Application No:

Attorney-at Law

CA/Bail /0130/23

334/1A, Bopetha, Gothatuwa.

Petitioner

HC TAB Colombo

Rasheed Mohammed Ibrahim

No.2972/21

D-10/8, Delgahagoda, Hingula.

MC Mawanella case No.

Mawanella.

B/11330/2018

(Presently at Bogambara Prion, Kandy)

Suspect

Vs

1. Officer In-Charge
Police Station,
Kegalle.
2. M.M.J.Marasinghe
Inspector of Police,
Officer-in-Charge

Criminal Investigations Department
Colombo-01.

3. Kavinda Piyasekera
Senior Superintendent of Police
Director,
Criminal Investigations Department
Colombo-01.
4. C.D.Wickramaratne
Inspector General of Police,
The Police Headquarters,
Colombo-01.
5. The Attorney General
Attorney General's Department
Colombo-12.

Respondents

BEFORE : **Sampath B. Abayakoon, J.**
P. Kumararatnam, J.

COUNSEL **M.M.Zuhair, PC with Rizwan Uwais for**
The Petitioner.
S.Jagodaarachchi, SC for the
Respondents.

ARGUED ON : **11/05/2023.**

DECIDED ON : **16/06/2023.**

ORDER**P.Kumararatnam,J.**

The Petitioner filing this Application has invoked the jurisdiction of this Court to grant bail to the Suspect upon suitable condition as this Court consider appropriate.

The Suspect is the 14th Accused in the case bearing No. HC TAB Colombo 2972/21 in the High Court Trial at Bar of Colombo.

The Suspect was arrested in connection with the Buddha Statue vandalization case and produced before MC,Mawanella under case No. B 11330/2018 on 23.01.2019. Thereafter he was detained under a detention order said to have been issued under Section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act No.48 of 1979. It was alleged that the Suspect had aided, abetted or conspired in any terrorist activity or concealed any information from security forces or in spreading “Muslim Extremism” which, according to the Petitioner, in any event is not an offence known to the law.

The Petitioner states that the Suspect had become aware that the Easter Sunday attack had taken place on 21/04/2019 at a time when he was in state custody from the time of his arrest on 22/01/2019 and that the Suspect had nothing to whatsoever to do with the said Easter Sunday attack and seeks bail from this Court under Section 15 B of the of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act No.22 of 2022.

According to the Petitioner, the Suspect is 60 years old and has been treated for recurrent respiratory tract infections with a history of cough, difficulty in breathing and fever and had been admitted to the Prison Hospital and the National Hospital Kandy for the recurrent afflictions.

Although a bail application was filed in the High Court at Bar-Colombo on behalf of the Suspect, the Court had declined the request for bail having considered the objections of the State. Further, the Court did not give reasons for not granting the request for bail. Now the Petitioner seeks relief in the exercise of the Original Jurisdiction vested by Section 15 B of the Prevention of Terrorism (Special Provisions) (Amendment) Act No. 22 of 2022.

At the hearing the State Counsel representing the Respondents raised following preliminary objections:

- a. That the Petitioner is preclude from making this application before this Court since the Suspect named in the Petition is the 14th Accused (hereinafter referred to as “the Accused”) of the Indictment before the High Court at Bar Holden in Colombo bearing No. HC TAB 2972/2021 and contend as per Section 15 of the Prevention of Terrorism Act No.48 of 1979 as amended(hereinafter referred to as the “PTA” read with the provisions of Sections 450 and 451 of the Code of Criminal Procedure Act No.15 of 1979(hereinafter referred to as the “CCPA”).
- b. That the Petitioner is preclude from making this application since the Petitioner is barred from invoking the jurisdiction of this Court as Section 15 B of the PTA as amended has no application in this matter since the indictment has been already served on the Accused in the High Court at bar case No. HC TAB 2972/2021.
- c. In any event, that the Accused has already exhausted his rights of invoking the original jurisdiction of the High Court at-Bar under Section 15 B of the PTA as amended and hence, the Petitioner is precluded from invoking the original jurisdiction of this Court.

In reply to the preliminary objection (a) the Petitioner contend that the Court of Appeal is vested with jurisdiction to hear and determine this matter under Article 138(2) of the Constitution read with Section 15 B of the Prevention of Terrorism (Temporary Provisions) Act as amended by Act No 12 of 2022.

In reply to preliminary objection (b) the Petitioner contend that it is Section 15 B of PTA which has no application and that it is the newly enacted Section 15 B that is applicable. A reading of Article 138(2) of the Constitution and Section 15 B would make it clear that the Court of Appeal has 'Original Jurisdiction'. The Court of Appeal does not lose its jurisdiction merely based on the 'Indictment being served on the accused' in the High Court as claimed by the Respondents.

In reply to preliminary objection (c) the Petitioner contend that the Constitutional jurisdiction vested and ordained in the Court of Appeal under Article 138(2) of the Constitution cannot in law be exhausted or ousted by Section 15 B of the PTA, which latter provision in fact and in law consolidates and strengthens the powers of the Court of Appeal, which, Parliament by enacting 15 B of PTA has by law vested and ordained as specific in Article 138(2) of the Constitution.

The Section 15 B of PTA (Amended) Act No. 12 of 2022 states:

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 stated by **Salmond**, “by interpretation or construction is meant, the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed”.

Interpretation of statutes is the process of ascertain the true meaning of the words used in a statute. When language is of the statue is clear, there is no need the rules of Interpretation, But, in certain cases, more than one meaning may be derived from the same word or sentence. It is therefore necessary to interpret the statue to find out the real intention of the statute.

In this regard, a Constitution Bench of five Judges of the Supreme Court in **R.S.Nayak v.A.R.Antulay,AIR 1984 SC 684** has held:

“.... If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating”. (para 18)

The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature-not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient.

It is pertinent to quote the remarks made by the Hon.Minister when the Bill of PTA (Amended) Act No.12 of 2022 was presented to the Parliament. The Minister remarked as follows:

“Having regard to all the changes which have taken place in our country during the last 43 years, we have whittled down the provisions of the Prevention of Terrorism Act, diminished its rigidity in a manner that is appropriate to the present stage of development of Sri Lankan society. We have stopped short of abolishing it altogether. That is too extreme a step and lacks a sense of balance”.(Colum-788 of the Hansard).

“.....when you take the Amendments a whole, in combination, I make bold to say that the cumulative effect of these Amendments is to make a very substantial improvement of the existing law.....I can convince any objective fair-minded person that these Amendments, without any extraneous agenda, will make a profound impact upon the existing laws of this country and that these Amendments will significant further the cause of human rights and human freedom in Sri Lanka”. (Colum-780 of the Hansard).

“.....the existing position in our country is that there can be and there had been, in some cases, unfortunately, and interval as long as six months or nine months between one date of trial and another, this means that the person who is subject to the Determination Order is languishing in custody for unjustifiably long period because the trial is taking so long” (Colum-781 of the Hansard).

Hence, when interpreting the provisions in the PTA amended Act No.12 of 2022, not only it should reflect the intention of the Legislature, but also reflect the true meaning of the words used in the Statute.

The main objection taken by the Respondent is that in view of Section 15 B of PTA has no application in this matter since the indictment has been already served on the accused in the High Court at Bar.

The Section 15 B of PTA (Amendment) Act No. 12 of 2022 states:

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:

In 15 B of PTA (Amendment) Act No. 12 of 2022, the key word is “the trial”. If the trial has not commenced after 12 months from the date of arrest, the Court of Appeal may release such person on bail, irrespective of whether the suspect has been indicted or not. Unless the trial is commenced, sending out indictment to relevant High Court does not preclude the suspect seeking bail from the Court of Appeal. The bail jurisdiction of the Court of Appeal under Section 15 B of PTA (Amendment) Act No.12 of 2022 only shifts to High Court once the trial is commenced in the High Court.

The plain meaning of the “trial” is the ‘formal examination before a competent tribunal of the matter in issue in a civil or criminal cause in order to determine such issue’. Hence, serving the indictment on the accused does not preclude the Petitioner invoking the jurisdiction of this Court for bail under Section 15 B of PTA(Amendment) Act No.12 of 2012. This entitlement only shifts once the formal trial commence before the High Court upon filing an indictment. As long as the trial is not commenced after filing the indictment before the High Court, the suspect is legally entitled to seek bail before the Court of Appeal.

Even though the accused has already exhausted his rights of invoking the original jurisdiction of the High Court at-Bar under Section 15 B of the PTA as amended, his entitlement to come before the Court of Appeal

under Section 15 B of the PTA as amended will not curtailed as long as the trial is not commenced before the High Court at-Bar.

Due to aforesaid reasons the preliminary objections raised by the Respondents are hereby dismissed and the matter is fixed for inquiry.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL