

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

In the matter of an application for  
Revision in terms of Article 138 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

**Court of Appeal**  
**Revision Application No:**  
**CA (PHC) APN/0066/2023**

The Democratic Socialist Republic  
of Sri Lanka.

**COMPLAINANT**

**High Court of Ratnapura**  
**HCR 25/2019**

**Vs**

1. Maradaweeran Rathnam alias Chuti
2. Selladore Manoj Kumar alias Babu

**ACCUSED**

**AND NOW**

Sivaselwam Shanthi Mari  
C1-F9, Flats, Armour Street,  
Colombo-13.

**PETITIONER**

**Vs**

The Hon. Attorney General  
Attorney General's Department,  
Colombo-12.

**RESPONDENT**

Selladora Manoj Kumar alias Babu  
**2<sup>ND</sup> ACCUSED-RESPONDENT**

**AND NOW BETWEEN**

Sivaselwam Shanthi Mari  
C1-F9, Flats, Armour Street,  
Colombo-13.

**PETITIONER-PETITIONER**

**Vs**

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

**RESPONDENT-RESPONDENT**

Selladora Manoj Kumar alias Babu

**2<sup>ND</sup> ACCUSED-RESPONDENT-RESPONDENT**

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

**P. Kumararatnam, J.**

**COUNSEL** : **Amila Palliyage with Sandeepani  
Wijesooriya for the Petitioner.  
Jehan Goonasekera, SC for the  
Respondent.**

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

**DECIDED ON** : 31/08/2023.

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**ORDER**

**P.Kumararatnam,J.**

The Petitioner-Petitioner (hereinafter referred to as the Petitioner) had filed this Revision Application on behalf of the 2<sup>nd</sup> Accused-Respondent-Respondent (hereinafter referred to as the 2<sup>nd</sup> Accused) who is the 2<sup>nd</sup> Accused in the High Court of Ratnapura Case No.HCR 25/2019.In the said case the 2<sup>nd</sup> Accused along with the 1<sup>st</sup> Accused were indicted for committing offences under Sections 358 and 300 of the Penal Code. As the 1<sup>st</sup> Accused who pleaded guilty to both charges before the commencement of the trial, he was sentenced with suspended sentence for both charges, fine and compensation of Rs.150, 000/-.

After trial the 2<sup>nd</sup> Accused was convicted for both charges and sentenced on 08.03.20233 as follows:

1<sup>st</sup> Count

5 years RI and a fine of Rs.10,000/-In default 2 months simple imprisonment.

2<sup>nd</sup> Count

10 years RI and a fine of Rs.10,000/-In default 2 months simple imprisonment.

A compensation of Rs.150, 000/- is to be paid to PW1. In default 6 months RI. Also ordered the both jail sentence to concurrent to each other.

The Petitioner states that upon being aggrieved by the said conviction and the sentence the 2<sup>nd</sup> Accused had preferred an appeal to this case. The Petitioner is the wife of the 2<sup>nd</sup> Accused named in the Petition.

In the meantime, filling the Petition of Appeal, the Petitioner made an application for bail pending appeal to the High Court of Ratnapura by way of a Petition and supportive affidavit dated 17.03.2023 in terms of Section 20(2) of the Bail Act No.30 of 1997.

The Learned High Court Judge of Ratnapura delivering his bail order dated 25.05.2023 has refused to enlarge the 2<sup>nd</sup> Accused on bail on the sole reason that the Petitioner has failed prove any exceptional circumstances which warrant granting of bail to the 2<sup>nd</sup> Accused.

The Petitioner states that due to following reasons the findings of the Learned High Court Judge is illegal, wrongful and contrary to law.

- a) The Learned High Court Judge has erred in law by failing to consider the exceptional circumstances averred by the Petitioner in paragraph 06 of the Petition to the High Court.
- b) The Learned High Court Judge has erred in law by failing to consider the Petitioner is a patient who has been diagnosed with cervical tuberculosis resulting in abnormal uterine bleeding and she has been suffering from chronic pelvic pain.
- c) The Learned High Court Judge has erred in law by failing to consider the Petitioner is in need of undergoing a total abdominal hysterectomy and bilateral salpingectomy surgery.
- d) The Learned High Court Judge has erred in law by failing to consider the fact that due to the incarceration of the 2<sup>nd</sup> Accused, the Petitioner had no mental, physical and financial assistance to undergo the said surgery and obtain treatments.
- e) The fact that the 1<sup>st</sup> Accused who pleaded guilty was given a suspended sentence and to the 2<sup>nd</sup> Accused who opted to go for trial was given a sentence of 10 years RI which was a right guaranteed to the Accused by the Constitution and ICCPR Act.

- f) The Learned High Court Judge has erred in law by failing to consider the law relating to bail pending appeal.
- g) The Learned High Court Judge has failed to consider that there would be a substantial miscarriage justice to the 2<sup>nd</sup> Accused in the event that he is not enlarged on bail.
- h) The Learned High Court Judge has failed to consider that fact that the 2<sup>nd</sup> Accused has no previous convictions.
- i) The fact that the sentence of the 2<sup>nd</sup> Accused is excessive comparing to the sentence of the 1<sup>st</sup> Accused.

The reasons (e)-(i) set above are connected to the issues pertains to the sentence passed by the Learned High Court Judge. As it can only be contested at the main appeal, those reasons will not be addressed in this order.

In an application of this nature, the bail only be granted upon successful submission that the Accused has an exceptional ground. Further the bail should not be granted as a right for a person who was convicted by a competent court.

As per the letter issued by the Consultant Obstetrician and Gynaecologist, Dr.Shemoun Marleen, the Petitioner has been diagnosed with cervical tuberculosis for two years and now she recommends that the surgical intervention be done as soon as possible.

But the Learned High Court Judge in his well-considered order considered this ground very extensively and given reasons as to why he refuse the application for bail pending appeal of the Accused.

Hence, considering the seriousness of the offence and the punishment imposed on the Accused by the Learned High Court Judge, I consider this is not an appropriate case to issue notice to the Respondents. The only remedy available to the Accused would be to make an application before the Court to fix the main appeal to an early date considering the circumstances of this case.

Hence, we refused notice in this case.

The Registrar of this Court is directed to send a copy of this order to the High Court of Ratnapura.

**JUDGE OF THE COURT OF APPEAL**

**SAMPATH B. ABAYAKOON, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**