

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

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

Court of Appeal

Officer-in-Charge

Application No:

Colombo Crime Division

CA (PHC) APN 0033/23

Colombo-09.

Complainant

High Court of Colombo

Vs

Case No.3910/22

Happawana Vithanage Sandun Akil
Akila

Accused

MC Maligakanda

Case No. B 4480/21

Happawana Vithanage Sumathipala
Petitioner

Vs

1. Officer-in-Charge

The Colombo Crime Division

Colombo-09

2. The Attorney General

Attorney General's Department

Colombo-12.

Respondents

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

COUNSEL **S.N.Danthanarayana** for the
Petitioner.
Jehan Gunasekera, SC for the
Respondents.

ARGUED ON : **20/07/2023.**

DECIDED ON : **16/10/2023.**

REVISION ORDER

P.Kumararatnam,J.

The Accused-Petitioner (hereinafter referred to as the Petitioner) filing this Revision Application has invoked the jurisdiction of this Court to grant bail to him upon suitable condition as this Court considers appropriate.

The Petitioner is the Accused in the case bearing No. HC/3910/22 in the High Court of Colombo. After his arrest he was produced before the Magistrate Court of Maligakanda in the case bearing No. B/4480/21 and was placed under a detention order.

According to the B report filed, the Petitioner was arrested by the officers attached to Colombo Crime Division upon an information. At

the time of his arrest, he was in his possession 103.200 grams of substance suspected to be Heroin (Diacetylmorphine).

The production had been sent to the Government Analyst Department and after analysis, the Government Analyst had forwarded the report to Court on 18/03/2021. According to the Government Analyst, 18.5 grams of pure Heroin (Diacetylmorphine) had been detected from the substance sent for the analysis.

The Petitioner had filed a bail application in the High Court of Colombo, the Learned High Court Judge had granted bail to him on 08.04.2022.

According to the Petitioner on the Court appearance day dated 11.10.2022 instead of appearing before High Court of Colombo, he had gone to Magistrate Court of Maligakanda and consulted his Counsel. Further, Petitioner had developed chickenpox and he couldn't appear before the High Court of Colombo again on 24.11.2022. Upon a warrant issued by Learned High Court Judge Colombo, he was arrested and produced before the High Court on 06/12/2022. The Learned High Court Judge had cancelled his bail and remanded the Petitioner to date.

Being aggrieved by the above mentioned bail cancellation order of the Learned High Court Judge, the Petitioner has filed this revision application to revoke the bail cancellation order.

The Counsel for the Petitioner submits that the suspect is in remand for more than 07 months.

According to the State Counsel, the Petitioner did not attend Court on the date fixed to serve indictment though summons had been duly served on him. As such, the Learned High Court Judge had issued a warrant on him. Although a motion was filed through his Counsel to recall the warrant, but when the matter was called on 25.10.2022 as per the motion, the Petitioner was not present in Court nor any application made on his behalf. When the matter was called on

24.11.2022, the Petitioner was not present in Court nor was represented by any Counsel. Filing further report, the police informed Court that the Petitioner was absconding to Court. As such the Court has extended the warrant.

Further the State Counsel submitted that the matter was called on 06.12.2022 and the Petitioner was produced in the Court. As he absconded the Court the Learned High Court Judge had rejected his application for bail.

Violation of any bail condition without any plausible reason is a very serious matter. Those who violate any valid condition on a recognizance of bail undertaking to a Court may face serious consequences. Further, those who found violating their bail condition will often find it much more difficult to receive another release on bail in the future.

In **Welivita Arachchige Chandrika v The Attorney General CA (PHC) No.58/2001** the court held that:

“The purpose of refusing bail or cancelling a subsisting bail order inter alia is to protect the community, reduce the likelihood of further offending and to ensure that the suspect attends court throughout the trial and makes himself available to be sentenced”.

To establish that the accused breached any bail condition, the State must prove that the accused was bound to follow condition set out in the bail order, the accused breached the condition set out in the bail order, and that the accused intended to violate a condition of his bail. If the accused accidentally violate a bail condition of his bail, he would not be dealt severely.

The Position taken by the Petitioner that he mistakenly went to the Maligakanda Magistrate Court instead of the Colombo High Court on 11.10.2022 is not tenable, as he does not deny receiving summons which specifies which Court he is to appear in. Hence, this cannot be considered that he accidentally violated a bail condition.

Moreover, on 11.10.2022, the Learned High Court Judge had issued a warrant to arrest the Petitioner and produce him on 24.11.2022 and had issued notice on the sureties as well. Hence, the position taken by the Petitioner is improbable and utter falsehood too.

The medical certificate marked and produced as P1 cannot be accepted as the certificate does not indicate that the Petitioner had chickenpox as averred in the Petition. Further, the medical certificate only issued on the request of the (patient) the Petitioner that he is not fit to attend Court on 23.11.2022 only. Further, the medical certificate does not contain the date of issue.

In **Wijesinghe v Tharmaratne Vol.IV Srikantha Law Report page 47** the Court held that:

“Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shock the conscience of court”.

In **Ellangakoon v OIC Police Station Eppawala and another [2007] 1 SLR 398** the Court held that:

“The revisionary powers of this Court is a discretionary power and its exercise cannot be demanded as of right unlike the statutory remedy of Appeal. Certain pre-requisites have to be fulfilled by the petitioner to the satisfactory of this Court in order to successfully catalyse the exercise of such discretionary power”.

As correctly contended by the Learned State Counsel, the Petitioner has adduced false information and/or suppressed material information and has not truthfully disclosed the reasons for his non-appearance in Court and has produced questionable medical certificate to support his

position which demonstrably and patently false, in reference to the documents filed of record.

Considering all the materials placed before this court, the Petitioner has failed to adduce that he has exceptional ground/s to free him on bail on the existing bail conditions. Hence, this revision application is refused.

The Registrar of this Court is directed to send this order to the High Court of Colombo and the Officer-in-Charge, Colombo Crime Division, Colombo-09.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL