

**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 of  
Articles 138 and 139 of The  
Constitution against the Order made  
by the Provincial High Court of the  
Northern Province in Vavuniya  
refusing to enlarge the accused-  
appellant on Bail pending the Appeal.*

**Court of Appeal Case No.  
CPA/63/2023**

Democratic Socialist Republic of Sri  
Lanka

**COMPLAINANT**

**High Court of the Northern Province  
in Vavuniya**

**Vs.**

Case No: HCV/BAIL/1552/2022

Murugesu Murugathash

**High Court of the Northern Province  
in Vavuniya**

No. 14/02, Milveethi,

Bazaar Street,

Case No: HCV/2881/2019

Vavuniya.

**ACCUSED**

Murugathas Ragavi  
Joseph Vaz Street,  
Rambaikulam, Vavuniya.

**PETITIONER**

**Vs.**

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

**COMPLAINANT-RESPONDENT**

Murugesu Murugathash  
No. 14/02, Milveethi,  
Bazaar Street,  
Vavuniya.

**ACCUSED-APPELLANT**

**AND NOW BETWEEN**

Murugathas Ragavi,  
Joseph Vaz Street,  
Rambaikulam, Vavuniya.

**PETITIONER-PETITIONER**

**Vs.**

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

**COMPLAINANT-RESPONDENT-  
RESPONDENT**

Murugesu Murugathash,  
No. 14/02, Milveethi,  
Bazaar Street,  
Vavuniya.

**ACCUSED-APPELLANT**

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

: P. Kumararatnam, J.

**Counsel** : C. Arnold Priyanthan for the petitioner

: Nishanthan Nagaratnam, S.C. for the respondent

**Supported on** : 27-07-2023

**Order on** : 07-11-2023

**Sampath B. Abayakoon, J.**

This is an application by the petitioner-petitioner (hereinafter referred to as the petitioner) seeking to invoke the revisionary jurisdiction of this Court granted in terms of the Article 138 of The Constitution.

The petitioner is seeking to challenge the order dated 04-05-2023 pronounced by the learned High Court Judge of Vavuniya, wherein, the application by the petitioner seeking bail pending appeal of the accused-appellant in the High Court of Vavuniya Case Number HCV/2881/2019 was refused.

The revision application was supported by the learned Counsel for the petitioner for notice on the respondent, namely, the Attorney General and this order is pronounced having considered whether the petitioner has adduced sufficient basis to get the notices issued in this regard.

The accused-appellant in the above-mentioned High Court Case, namely, Murugesu Murugathas has been indicted before the High Court of Vavuniya for one count of cheating a sum of Rs. 6 Million over a land transaction, thereby committing an offence punishable in terms of section 403 of the Penal Code. He has also been charged with four counts punishable in terms of section 25(1) of the Debt Recovery (Special Provisions) Act No. 2 of 1990 as amended by Act No. 9 of 1994 for issuing four cheques valued at Rs. 1.5 million each without having sufficient funds in his relevant bank account.

After trial, the accused-appellant was found guilty as charged of his judgement dated 27-10-2022 by the learned High Court Judge of Vavuniya. Accordingly, he has been sentenced for a term of 7 years rigorous imprisonment, a fine of Rs. 100000/- and a default sentence of 1-year rigorous imprisonment on count 1.

With regard to counts 2, 3, 4 and 5, he has been imposed a one year each rigorous imprisonment in addition to a fine of Rs. 150000/- each, being the 10% of the total sum mentioned in the cheques, and a default sentence of 3 months simple imprisonment each.

The total period of rigorous imprisonment imposed on the accused-appellant had been 11 years, apart from the default sentences imposed.

The accused-appellant has appealed against his conviction and the sentence. Subsequent to the appeal being preferred, the petitioner being the daughter of the accused-appellant has filed an application for bail pending appeal seeking bail for the accused-appellant.

It is against the order made by the learned High Court Judge of Vavuniya refusing bail pending appeal for the accused-appellant, the petitioner is now seeking to invoke the revisionary jurisdiction of this Court.

It is well settled law that the power of revision being a discretionary remedy, such a remedy will be available only in exceptional circumstances.

In paragraph 14 of her petition before this Court, the petitioner has urged the following; as the grounds which constitute exceptional circumstances that justify the invocation of the revisionary jurisdiction of this Court.

The grounds being,

- a. The learned High Court Judge has failed to duly appreciate and/or take due cognizance of the fact that there is/are no valid reason(s) for refusing the application for bail pending appeal.
- b. The learned High Court Judge has failed to duly appreciate and/or take due cognizance of the fact that the complainant has failed to establish any reasonable basis to object to bail.
- c. The learned High Court Judge has failed to duly appreciate and/or to consider that there were exceptional circumstances to grant bail pending the appeal of the accused-appellant.
- d. The learned High Court Judge failed to duly appreciate and/or take due cognizance of the fact that the medical condition of the accused-appellant requires him for special medical care.

- e. The learned High Court Judge failed to duly appreciate and/or to consider the medical reports submitted by the accused-appellant.
- f. The learned High Court Judge erred in failing to consider the ailment of the accused-appellant and the fact that he had to look after his 90 years old mother who needs special care.
- g. The learned High Court Judge failed to duly appreciate and/or to consider that the appellant is 62 years old and a father of 5 daughters and a son total of 6 children and two younger children are students.
- h. The learned High Court Judge has failed to duly appreciate and/or take due cognizance of the fact that the accused-appellant has no previous convictions.

This Court heard the submissions of the learned Counsel for the petitioner justifying the application before the Court to get the notices issued on the respondent. It is the view of this Court that, for the petitioner to succeed in her petition before this Court, it becomes necessary for the petitioner to convince that the learned High Court Judge of Vavuniya was wrong in his refusal to grant bail pending appeal to the accused-appellant, and the learned High Court Judge was misdirected as to the relevant law in that regard, when the bail pending appeal was refused.

The relevant provision for bail in relation to a person who has appealed against a conviction and a sentence imposed on him by a High Court is section 333(3) of the Code of Criminal Procedure Act No. 15 of 1979.

The said section reads as follows.

**333(3). When an appeal against a conviction is lodged, the High Court may subject to subsection 4 admit the appellant to bail pending the determination of his appeal. An appellant who is not admitted to bail shall pending the determination of the appeal be treated in such**

**manner as may be prescribed by rules made under the Prisons Ordinance.**

Subsection 4 is the provision where if the accused is sentenced to death, the execution shall be stayed pending the determination of the appeal.

A similar provision can be seen in the Bail Act No. 30 of 1997 in respect of granting bail to a convicted person pending the determination of an appeal.

The relevant section 20(2) and 20 (3) reads as follows.

**20. (2) When an appeal against a conviction by a High Court is preferred, the High Court may subject to subsection 3 release the appellant on bail pending the determination of his appeal. An appellant who is not released on bail shall, pending the determination of the appeal be treated in such manner as may be prescribed by rules made under the Prisons Ordinance.**

**(3) Where the accused is sentenced to death, execution shall be stayed and he shall be kept on remand in the prison pending the determination of the appeal.**

It needs to be noted that once a person is found guilty and convicted by a competent Court of law, the presumption of innocence that is applicable to a suspect or an accused would not be available for such a person.

Having considered the ambit of the provisions of the Bail Act in relation to a person convicted of an offence, **Shirani Thilakawardena, J.** in the case of **The Attorney General Vs. Selvaraj Mahalechchami SC Appeal 131/2006** held,

*“It is also significant to note that the presumption of innocence that inures in favour of those suspected or accused or connected with the commission of an offence ceases to operate after conviction by a Court of competent jurisdiction. Indeed, after conviction, the burden shifts to the accused.*

*Therefore, the intention of the legislature apparently was that the guiding principle of granting bail was restricted to suspects and accused persons and did not extend to those convicted after trial.”*

Held further;

*“The interpretation of the principle enactment has always held that there must be exceptional circumstances. As section 20 of the Bail Act No. 30 of 1997 is identical to that contained in the code of criminal procedure, in its implementation the earlier restricted view of the convicted person having to disclose exceptional circumstances for grant of bail must prevail.”*

Our superior Courts have consistently viewed that establishing exceptional circumstances as a pre requisite for a person who is seeking bail pending an appeal preferred by such a person.

This principle was emphasized in the case of **Jayanthi Silva and Two Others Vs. The Attorney General (1997) 3 SLR 117** in the following manner.

*“Over the years, a principle has evolved through judicial decisions that bail pending appeal from convictions by the Court would only be granted in exceptional circumstances.”*

Therefore, it becomes necessary for this Court to consider whether the petitioner has averred sufficient exceptional circumstances before the High Court and the learned High Court Judge has failed to consider the said exceptional circumstances in its correct perspective.

The exceptional circumstances urged before the High Court had been that,

1. The appellant is a diabetic patient with high blood sugar and to consider his health condition and the medical requirements.



2. The appellant was the only person who looks after his 90-year-old mother who is paralyzed and suffering without any care.
3. The appellant was running a lodge at No. 94, Complex Road, Vavuniya in the name of Island Lodge and the employees are facing several problems in running the business.
4. The appellant is 62 years old and the situation of the family that he is the father of 6 children and 2 younger children are students.
5. The appellant has no previous convictions.

It is abundantly clear from the order dated 04-05-2023, the learned High Court Judge was well aware of the grounds upon which bail pending appeal can be granted to a convicted person. He has drawn his attention towards the decided cases of our Superior Courts as the yardstick that has to be applied in that relation.

The learned High Court Judge has concluded that none of the matters urged by the petitioner can be considered as exceptional grounds, but only ordinary circumstances any person who is convicted and sentenced by a Court of law can face. It has been observed that the petitioner has failed to substantiate in a proper manner, the alleged medical condition of the accused-appellant. The documents annexed with the petition in that regard does not reveal any basis to conclude that the accused-appellant needs special care outside of the prisons system or he is suffering from any ailment that cannot be treated while being incarcerated.

His business being affected, his age, his children's issues, the fact that he has no previous convictions are clearly not matters that can be considered exceptional, but matters that any person who is sent to jail would probably face.

Although the petitioner has claimed that the accused-appellant is the only person who can care for his old mother, I do not find any reason to accept such a contention other than it been a mere statement in order to justify the bail application.

For the reasons as considered above, I find no basis to justify the issuing of notices in relation to this revision application to the complainant-respondent-respondent. Accordingly, the application is dismissed without the notice being issued.

Judge of the Court of Appeal

**P. Kumararatnam, J.**

I agree.

Judge of the Court of Appeal