

**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(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 404 of the Code of Criminal Procedure Act No.15 of 1979 and read with Section 3 of Bail act No.30 of 1997.

Court of Appeal No.

The Officer-in-Charge (Special Unit)

**CA(PHC)APN 0067/23
High Court of Colombo**

Criminal Investigation Department,
Colombo-01.

Case No. HCRA 36/23

MC Colombo

COMPLAINANT

Case No. B/81648/01/22

Vs.

M.N.M.Nadvi

No.40, Webadamulla, Kal-Eliya.

(Presently in Colombo Remand Prison)

SUSPECT

AND BETWEEN

M.N.M.Nadvi

No.40, Webadamulla,Kal-Eliya.

(Presently in Colombo Remand Prison)

SUSPECT-PETITIONER

Vs.

1. The Officer-in-Charge (Special Unit)
Criminal Investigation Department,
Colombo-01

COMPLAINANT-RESPONDENT

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

RESPONDENT

AND NOW BETWEEN

M.N.M.Nadvi

No.40, Webadamulla,Kal-Eliya.

(Presently in Colombo Remand Prison)

SUSPECT-PETITIONER-PETITIONER

Vs.

1. The Officer-in-Charge (Special Unit)
Criminal Investigation Department,
Colombo-01

COMPLAINANT-RESPONDENT-

RESPONDENT

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

RESPONDENT-RESPONDENT

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

COUNSEL : **Rushdie Habeeb with Rizwan Uwaiz**
and Supun Dissanayake for the
Petitioner.
Jayalakshi De Silva, SSC for the
Respondents.

ARGUED ON : **25/10/2023**

DECIDED ON : **22/02/2024**

JUDGMENT

P.Kumararatnam,J.

The Suspect-Petitioner-Petitioner (Hereinafter referred to as the Petitioner) is the suspect in the Colombo Magistrate Court Case bearing No. B/81648/01/2023. The Petitioner was arrested by Complainant-Respondent- Respondent (hereinafter referred to as the Complainant) on 07.02.2023 and produced before the Colombo Chief Magistrate Court and was allegedly charged under Sections

386,389,392,400,402,454 of the Penal Code and Under Section 5 of the Offences Against the Public Property Act No.12 of 1982.

The Petitioner while in remand made an application for bail before the Magistrate Court of Colombo. After oral and written submissions of the Counsel for the Petitioner, the Learned Magistrate had refused the said application and further remanded the Petitioner.

Being aggrieved by the said order of the Learned Magistrate of Colombo, the Petitioner filed a revision application in the High Court of Colombo on 28.03.2023 to set aside the said order.

After the inquiry, the Learned High Court Judge of Colombo by his order dated 24.05.2023 refused to grant bail to the Petitioner.

The Petitioner was appointed as a Court Clerk Grade II under the Judicial Management Service by the Judicial Service Commission on 08.02.2012. He was served in the Akkaraipattu Magistrate's Court Registry from his appointment until 31.12.2013 and was transferred to the Puttalam Magistrate's Court and the District Court Registry on 01.01.2014. In the meantime, he was absorbed into the permeant carder.

From 01.01.2017 the Petitioner was transferred to the Colombo District Court and served until 31.10.2021 and was transferred to the Registry of the Chief Magistrate's Court of Colombo on 01.11.2021 and appointed as the in-charge officer of the Production Room.

After assuming duties as the in-charge officer of the production Room of the Magistrate's Court of Colombo, he brought to the notice of the Registrar of the Court of difficulties in handing the Production Room alone and he had requested two more staffs to manage the productions efficiently. Also brought to the attention of the Registrar that the subject of releasing jewels to the National Gem and Jewellery Authority on 23.11.2022 he had realized an individual impersonated a police constable named Ramesh (75612) attached to the Criminal

Investigation Department surreptitiously carried the jewels 308.14 grams in total weight.

For this loss, the Registrar of the Colombo Magistrate Court lodged a complaint at the Kesellwatte Police Station on 02.12.2022. Taking over the investigation by the Criminal Investigation Department, they arrested the Petitioner on 07.02.2023 and produced him in the Magistrate Court of Colombo on 08.02.2023.

After the Appointment as the in-charge of the Production Room, a person named K.A.G.S Kumara who was in-charge of the Production Room earlier and was made a suspect in case No. 69190/1/22, was brought to the Production Room from remand prison from 31.08.2022 onwards to assist the Petitioner in taking over the productions. During this time K.A.G.S. Kumara's relatives and friends had come to meet him in the area of the Production Room.

The Counsel for the Petitioner contested that the productions in the official custody which is claimed by a third party and in the even the Court ordered to release the same, would not fall within the interpretation of the Public Property under the Section 12 of the Offences against the Public Property Act No. 12 of 1982. Hence, urged this Court to consider this grey area in the legal provision as an exceptional circumstance.

The Counsel for the Petitioner submitted to the Court that the Petitioner is a father of three children and he is the only bread winner of the family. Further, his parents are also living with him and her mother is suffering from cancer and his father is a paralysed person who is also undergoing medical treatment.

The Petitioner has no previous conviction or pending cases or no pending disciplinary inquiry under the Establishment Code. He is in remand custody for more than 09 months.

The State opposing to bail submitted that as the investigation is not over releasing the Petitioner will hamper the smooth continuation of the investigation. The Senior State Counsel submitted that the investigation conducted up to now revealed that there is a strong prima facie case against the Petitioner.

Exceptional circumstances are not defined in the statute. Hence, what constitutes exceptional circumstances must be considered on its own facts and circumstances on a case by case.

Section 8(1) of the Offences Against Public Property Act governs the granting of bail on persons committed or has been concerned in committing or is suspected to have committed offences punishable under the Act. The section reads;

8. (1) The provisions of the Code of Criminal Procedure Act, No. 15 of 1979, in relation to bail shall apply where any person surrenders himself or is produced on arrest on an allegation that he has committed or has been concerned in committing or is suspected to have committed; or to have been concerned in committing an offence under this Act:

Provided, however, that where a Gazetted officer not below the rank of Assistant Superintendent of Police certifies that the value of the subject-matter in respect of which the offence was committed, exceeds twenty-five thousand rupees such person shall be kept on remand until the conclusion of the trial. It shall be competent for the court in exceptional circumstances to release such person on bail after recording reasons; therefore.

The Offences Against Public Property Act provided express provision in releasing a person on bail in such an offence; that is only on exceptional circumstances. Therefore, if the value involved in the offence exceeds Rs. 25000/-, the Bail Act does not apply.

In **Ramu Thamodarampillai v. The Attorney General [2004] 3 SLR 180** the court held that:

“the decision must in each case depend on its own peculiar facts and circumstances”.

In **CA(PHC)APN 107/2018** decided on 19.03.2019 the court held that remanding for a period of one year and five months without being served with the indictment was considered inter alia in releasing the suspect on bail.

In a bail inquiry when the Petitioner brings to the notice of the Court the circumstances which could be capable of shaking the prosecution case, the Court has the discretion to tentatively look to the facts and circumstances of the case to ascertain whether a reasonable ground exists or not either to grant or refuse bail. The Court should not probe into the merits of the case, but restrict itself to the material placed before it. But, even for the purpose of bail any benefit of doubt arising in the case must accrue to the Suspect.

Dr.A.R.B.Amerasinghe in his book titled “Judicial Conduct, Ethics and Responsibilities” at page 284 observes that:

“However, Article 13(5) of our Constitution states that every person shall be presumed innocent until he is proved guilty. Article 13(2) further provides that a person shall not be deprived of personal liberty except upon and in terms of the order of a judge made in accordance with procedure established by law.

The State imposes a punishment on the suspect indirectly by keeping him in remand custody for an uncertain period. Obviously, that was not the intention of the legislature when it enacted Article 13(5) of the Constitution”.

One of the grounds urged by the Learned Counsel is that the B report filed by the Keselwatte Police and further report reports filed subsequently by the Criminal Investigation Department revealed that no allegation that the Petitioner has been concerned in committing any offence. In order to be arrested for a criminal offence there has to be evidence, there has to be some level of evidence that would lead a reasonable, cautious police officer to believe the accused guilty. If the prosecution does not have any incriminating evidence against the suspect, this circumstance could be considered in adjudicating his bail application. In considering these matters, the court must bear in mind the presumption of innocence.

Taking all these into account, especially the state of further investigation, the period in remand, and other circumstances of the case, I consider this an appropriate case to grant bail to the Petitioner. Hence, I order the Petitioner be granted bail with following strict conditions.

1. Cash bail of Rs.50,000/=.
2. To provide 02 sureties. They must sign a bond of two million each.
3. The Petitioner and the sureties must reside in the address given until conclusion of his case.
4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
5. To surrender his passport if any, to court and not to apply for a travel document. The Controller of the Immigration and Emigration is informed of the travel ban on the Petitioner.
6. To report to the Criminal Investigation Department, Colombo-01 on the last Sunday of every month between 9am to 1pm.
7. Any breach of these conditions is likely to result in the cancellation of his bail.

The Bail Application is allowed and the learned Magistrate of Colombo is hereby directed to enlarge the Petitioner on bail on the above bail conditions.

The Registrar of this Court is directed to send this Judgment to the Magistrate Court of Colombo and Officer-in-Charge of the Criminal Investigation Department, Colombo-01.

JUDGE OF THE COURT OF APPEAL

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE COURT OF APPEAL